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New edition of the
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NEW EDITION

OF THE

BABYLONIAN TALMUD

Original Text, Edited, Corrected, Formulated, and
Translated into English

BY

MICHAEL L. RODKINSON

SECTION JURISPRUDENCE (DAMAGES)

TRACT BABA BATHRA
(LAST GATE, PART II.)

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EXPLANATORY REMARKS.

In our translation we adopted these principles:

1. *Tenan* of the original—We have learned in a Mishna; *Tania*—We have learned in a Boraitha; *Itemar*—It was taught.
2. Questions are indicated by the interrogation point, and are immediately followed by the answers, without being so marked.
3. When in the original there occur two statements separated by the phrase, *Lishna achrena* or *Waibayith Aema* or *Ikha d'amri* (literally, "otherwise interpreted"), we translate only the second.
4. As the pages of the original are indicated in our new Hebrew edition, it is not deemed necessary to mark them in the English edition, this being only a translation from the latter.
5. Words or passages enclosed in round parentheses () denote the explanation rendered by Rashi to the foregoing sentence or word. Square parentheses [] contain commentaries by authorities of the last period of construction of the Gemara.

TO THE REVEREND GENTLEMEN
HERRN GEHEIMER REGIERUNGSRATH
MORITZ LAZARUS, PH.D., D.D.
UNIVERSITY PROFESSOR
AND
MONS. ZADOC KAHANA
GRAND RABBIN
DU CONSISTOIRE CENTRAL DES ISRAÉLITES DE FRANCE
WHOSE NAMES ARE FAMOUS
IN THE SCHOLARLY WORLD ALL OVER THE GLOBE
THIS FOURTEENTH VOLUME
IS MOST SINCERELY INSCRIBED BY THEIR ADMIRER AND
PERSONAL FRIEND
MICHAEL L. RODKINSON

New York, Eve of Passover, 5662 (April 21st, 1902)

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SYNOPSIS OF SUBJECTS

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(PART II.)

CHAPTER VI.

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CHAPTER VIII.

MISHNA I. There are those who bequeath, and also inherit; others who inherit but do not bequeath; and also those who neither bequeath nor inherit. The passage [Num. xxvii. 8] in the Scripture does not correspond with all that is taught above. Who were the grandfathers of Pinchos ben Elazar on his mother's side. If one is about to marry, it is advisable for him to investigate the character of the bride's brothers. It is better for one to hire himself to Abhada Zarah (idolatry) than to rely upon people that shall support him. Abhada Zarah means "idolatry." Literally, however, it is "a strange service." Is the tribe of the mother's side equal to the tribe of the father's side? What happened to Janai and Jehudah the second when they came together? The husband from his wife. Whence is this deduced? Whence came Pinchos ben Elazar to have a mountain which his father did not possess? Whence is it deduced that the husband does not inherit the estate to which his wife during her life is only heir apparent? In the case of a gift with the ceremony of a sudarium, whether healthy or sick, what time may be given him to retract, 241-255

MISHNAS II. TO IV. The order of inheritance is thus, etc. If one decides that a daughter shall inherit, when there is a daughter of a son, even if he were a prince in Israel, he must not be listened to. What happened to Rabban Johanan with the Sadducean? "The daughters of Z'lophchod have inherited," etc. The land of Israel was divided among the ascendants from Egypt, and not among their children. Joshua and Caleb inherited the shares of the spies. Whence is this deduced? May or may not a disciple be honored in the presence of his master? Why is the order in mentioning the daughters of Z'lophchod different in the Scripture? If a woman marries at less than twenty years of age, she bears children until sixty; but when she marries after forty, she does not then bear children. There were seven men who encompassed the whole world since its creation until now, etc. How was the land of Israel divided—into twelve parts, or among the people severally? The land of Israel will be divided among thirteen tribes. A son and a daughter are equal concerning inheritance, etc. How shall the double share of the first-born be counted—double as to each brother or as to the whole estate. What is the reason that Jacob took away the privilege of the first-born from Reuben and gave it to Joseph? Jacob's children, who came to Egypt, in sum you find seventy; however, if you will number

them in detail, you will find only sixty-nine. In the case of inheritance of a promissory note, the first-born took a double share, etc. A first-born does not take a double share in a loan. The Palestinians, however, say he does. What is to be done with an estate bequeathed for life only, which the inheritor has sold? A first-born does not inherit property to come in the future, and the same is the case with a husband. If the first-born protests when his brothers come to improve the estate left by their father, 255-271

MISHNAS V. TO VII. A will which is against the law of the Scripture must not be listened to; however, if it is as a gift, it may. "My son is my first-born," he takes a double share; "My son is a first-born," he does not. "Go to Sh'kh'at my son, who is a first-born, whose spittle cures eyes." If two wives of one have born two sons in a secret place which was dark, and it is not known who was born first, they may write a power of attorney each to the other, etc. If one was known to the people as a first-born, and his father said of another, etc. A creditor may collect from bondsmen belonging to orphans for their father's debt. A second-cousin, a third-cousin, may be a witness (according to the law). If one says, "This child shall inherit all," or, "My wife shall take an equal share with one of my sons," he is to be listened to. If the word "gift" was mentioned in the beginning, etc. How is this to be illustrated? If one wrote, "The field on the east side shall be given to A, and B shall inherit that on the west side," is title given or not? All that is said in one speech is valid, except as to idolatry. If one says: "A shall inherit my estate," and he has a daughter, he said nothing; or, "A shall inherit my estate instead of my daughter," or, "My daughter instead of my son"—how is the law? A Halakha must not be taken for granted from a discussion or from an act, unless one is told to do so. Rabbi said: My youth made me presume to contradict Nathan the Babylonian. If one bequeath all his estates to his wife, he makes her a guardian only. (All that is said above treats of a will by a sick man.) How is it if this was done while in good health? If one has bequeathed all his estates to his sons, but has left to his wife a small portion of ground. How is it in a similar case when one is in good health? A sick person who has bequeathed all his estate to a stranger, it is to be investigated if the latter is in some way fit to be called a direct heir. An inheritance has no interruption, and goes direct to the heirs of the inheritor. The rabbis condemned one who bequeathed his estate to strangers, leaving out his children. What happened to Shamai the elder with Jonathan b. Uziel,

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MISHNAS VIII. TO XII. "This is my son," he is to be trusted; "My brother," he is not. If one testify he has divorced his wife, he is to be trusted. If a short period of time, can one's testimony be divided—that for the past he should not be trusted, and for the future he should? If a sick person said to witnesses: "Write, and give a mana to so and so," and before they did so he dies. How is it if the same was said by one in good health? If one wishes to bequeath his estate to his children, etc. How if he has written "from to-day and after my death"? If a sudarium is mentioned, no matter what version was used, nothing is needed to be added. "My estates are bequeathed to you, and after you to B," etc. Who is called a crafty villain? To a gift presented by one who is dying, at what time is title given? There was a woman who had a tree on the estate of

R. Bibbi b. Abayi, etc. If A said to B, "I give you this ox as a present, with the stipulation that you shall return it to me." If a sick man said, "I have a mana with so and so," the witnesses may write this, etc. The Halakha prevails that it must not be feared the court will err. The father has the right to gather the products bequeathed to his son, etc. If he left grown-up and minor sons, the grown ones have no right to derive any benefit on account of the minors, etc. How is it if a woman has borrowed money, consumed it, and thereafter she married without paying her debt, and brought estates with her at marriage? "The following is not to be returned in the jubilee year," etc. (p. 310). In some respects the husband should be considered as an heir, and in some respects as a buyer, 297-311

CHAPTER IX.

MISHNAS *I. AND II.* If one leave sons and daughters, if the inheritance is of great worth, the daughters must be supported from it; if a moderate one, the daughters must be supported, and the sons may go a-begging. If the estates were of great worth, but there was a promissory note in the hands of a creditor. If the deceased left a widow and a daughter, and the estates left could support only one of them. If one leave sons, daughters, and an hermaphrodite. "If my pregnant wife shall bear a male," etc. A child of one day inherits and bequeaths, etc. All that was said here was taught in the city of Sura. In Pumbeditha, however, it was taught otherwise, etc. One said, "I bequeath my estate to the children who shall be born of you by me," etc. One said, "My estate shall be for you and your children." And R. Joseph decided: One half of the estate belongs to her, and the other half to her children. There was one who had sent home pieces of silk, without any order to which member of his household they belonged, . 312-321

MISHNAS *III. TO VII.* If one left grown-up and minor sons, and the former improved the estate, etc. If one has made the wedding of his son in one of his houses, the son acquires title to the house, etc. Three things the rabbis enacted as laws without giving any reason. Brothers partners in business; if one of them was taken by the government to work, etc. If one of the brothers took two hundred zuz to begin the study of the Torah or to learn a trade, etc. Wedding presents may be replevined by the court. If one has betrothed a woman and dies before marriage, a virgin collects two hundred and a widow one hundred zuz. Five things were said about wedding presents: (*a*) They may be collected by the court; (*b*) they are returned at the time when the donator marries, etc. Who is like unto a wealthy man who is known to be rich by his many cattle and estates, etc.? The different explanations of Prov. xv. 15. If one sends presents to the home of his betrothed's father, to the value of one hundred manas, and has partaken of the betrothal meal, even for one dinar, they are not to be returned. How is it when the presents have improved, etc.? If a sick person had bequeathed all his estates to strangers, etc. Three things Achithophel charged his sons, etc. If a sick person said: "A shall reside in such a house," or, "B shall consume the products of such and such a tree," etc. A sick person who has bequeathed all of his estates to strangers, it must be investigated how was the case. If a sick person has bequeathed all his estates to strangers and thereafter is cured. The expressions, "He shall take," "shall be rewarded."

How shall it be done if he expresses himself: "A is the one who shall derive benefit from my estates"? If a sick person has confessed, "I owe so much to so and so," shall it be taken for granted, etc.? In five cases the act of a gift is not considered unless the bequeather writes "all my estates." What is considered estates? How is the case with the Holy Scrolls—as they must not be sold, are they considered estate or not, etc.? The mother of Rami b. Hama bequeathed to him her estates on one evening. The mother of R. Amram the Pious possessed a bundle of deeds, etc. Concerning a gift in part of a sick person—in one respect it is equal to a gift by one in good health, etc. A sick person who has bequeathed all his estates to strangers, although made with a sudarium, if he was cured he may retract. If one bequeathed first to one and thereafter to another, etc., . . . 321-345

MISHNA VIII. If in the deed it was not mentioned that he was sick, and he claims that he was sick at the time of writing and had a right to retract. What kind of evidence is required, etc. It happened in the city of Bene Brack, that one sold the estate of his father and died; and his relatives complained that he was not of age when he died. What must be the age of one who has the right to sell the estates left him by his father? How is he to be considered during the nineteenth year—nineteen, which is still not of age, or twenty? There was one lad less than twenty, who had sold the estate of his father. If a lad of thirteen years and one day presented a gift to some one, his act is valid. If one divides his estates verbally, no matter if he was in good health or dangerously sick, according to R. Elazar to real estate title is given by money, etc. It happened with an inhabitant of the city of Mruni, who was in Jerusalem, that he possessed much valuable property which he desired to present to different persons, etc. If it happens that a sick person divides his estates verbally on the Sabbath, etc. Suppose a house falls upon A and his father or on any persons, that one of them has to be bequeather and the other inheritor, and it is not known who dies first. If a son has sold his share of the inheritance of his father to some one, and dies while the father was still alive, and thereafter his father died, the son of the seller has a right to take away the goods from the buyer. And this is a complicated case in the law of money matters. A son inherits from his mother when he is already in the grave, so that his brothers from his father's side should inherit from him, 345-357

CHAPTER X.

MISHNAS I. TO V. A simple get (document) the witnesses must sign at the end of the contents. A folded one, however, the witnesses must sign outside, etc. In what place should the witnesses sign a folding document? If the signatures of the witnesses were separated by a space of two lines from the writing, the document is invalid; is it meant with their usual space or without? There was a folding document which came before Rabbi, and he said: "There is no date to it," etc. All must be done as is customary in the country. If there was only one witness to a simple, etc. If in the document was written, "hundred zuz," which make twenty selas, etc. If on the top of the document was written "a mana," and on the bottom "two hundred zuz," or *vice versa*, etc. There was a document in which was written, "six hundred and a zuz," etc. There was a toll-master of a bridge who was a

Jew who said to Abayi: "Let the master show me his signature," etc. A divorce may be written by the court for a husband in the absence of his wife—the husband must pay the fees. Documents of arbitrating and all other acts of mediating by the court must not be written unless both parties are present—at the expense of both. There was a receipt approved by Jeremiah b. Abba. However, the same woman came into his court to claim her marriage contract several years later, etc. If one has paid a part of his debt, and deposited his document with some one. If it happened to one that a promissory note became erased, he must find witnesses. The approval must be written: "We three, E, F, G, the undersigned, were sitting together, and before us was brought by A, the son of B, an erased note," etc. If one comes before the court claiming that he has lost a promissory note from so and so, etc. If one has presented a gift to his neighbor by a deed, if the deed was returned by the beneficiary the gift is considered returned. The following is the order of claims before the court. The lender comes to the court to complain that the borrower does not pay his debt, etc. Concerning deeds, they may write another one without mentioning the responsibility of the seller for the estate, etc. There was a woman who gave money to one that he might buy estates for her, etc. If one came to claim a field saying that he possesses a deed, and also that it was in his possession the years of hazakah, etc. If there was any forgery in the document, or there were incompetent witnesses, the transferring is not considered, 357-379

MISHNAS VI. TO IX. If one has paid a part of his debt, according to R. Jehudah the promissory note must be changed. According to R. Jose, the lender has to give a receipt for the amount paid. The Halakha prevails neither with R. Jehudah nor with R. Jose, etc. If the document was written at the date used by the government, and such a date fell on a Sabbath or on the Day of Atonement, etc. It happened with R. Itzhak b. Joseph, who had money with R. Abba, etc. Abba said to his scribe: "When it shall happen that you have to write a document with a later date, you must write as follows: This document was postdated by us for a certain reason," etc. If one holds a promissory note for a hundred zuz, and requests that it shall be rewritten in two notes each of fifty zuz, etc. If there were two brothers, one rich and one poor, and they inherited from their father a bath-house, or an olive-press house, if for business they must share equally; but if for private use, etc. If there are two persons who bear one and the same name, they cannot give promissory notes to each other, nor to any of the inhabitants. If a promissory note was paid, etc. If one (while struggling with death) says to his son: "A promissory note among the notes I possess is paid, but I do not remember which," etc. If one made a loan to his neighbor through a surety, he must not collect first from the surety, etc. Whether a surety has to pay or not, R. Jehudah and R. Jose differ, etc. If the surety said: "Lend to this man, and I am the surety," etc. If the expression was, "Give to him, and I will return you," then has the lender nothing to do with the borrower. There was a judge who transferred the estate of the borrower to the lender, before the lender had demanded his money from the borrower, etc. There was a surety for orphans who had paid the lender before he notified the orphans. If one was put under the ban because he declined to pay his debts. If the promissory

note of the deceased was in the hands of the surety, who claims to have paid the lender, etc. There was a surety for a deceased debtor to a heathen, who paid the heathen before he had demanded his debt from the orphans. If one made himself surety to a woman for a marriage contract, etc. A sick person who has consecrated all his estates, and at the same time said: "So and so has a mana with me," he may be trusted. A sick person who said: "A has a mana with me," and thereafter the orphans claimed that they have paid, they are to be trusted. If one borrows money on a promissory note, the lender has a right to collect from encumbered estates. If it happen that a creditor sees his debtor in the market, grapples him by the throat, and one passes by and says, "Leave him alone, I will pay," he is nevertheless free, because the loan was made not upon his surety. Biblically there is no difference between a loan on a document and by word of mouth, and it should be collected from encumbered estates. A verbal loan is not collectible—neither from heirs nor from buyers. If the surety signed before the signatures, it may be collected from encumbered estates. Only a surety in the presence of the court is free from a sudarium, but all others are not,

TRACT BABA BATHRA (LAST GATE).

(PART II.)

CHAPTER VI.

RULES AND REGULATIONS CONCERNING THE SALE OF SEEDS WHICH BECOME SPOILED, THE QUANTITY OF DUST WHICH MAY OR MAY NOT BE ACCEPTED IN THE MEASURES OF GRAIN AND FRUIT, AND WINE WHICH BECOMES SOUR AFTER SALE BEFORE DELIVERY. —CONCERNING CONTRACTORS FOR HOUSES AND STABLES, WELLS AND GARDENS SITUATED IN NEIGHBORS' PROPERTIES OR PUBLIC THOROUGHFARES IN PRIVATE GROUND, AND CONCERNING GRAVES AND CAVES FOR BURYING.

MISHNA I.: If one sold fruit or grain (without any stipulation), and the buyer sowed it but it did not sprout, even if this were seed of flax, the seller is not responsible. R. Simeon b. Gamaliel, however, maintains that if he sold seeds for gardens, which could not be used for eating, the seller is responsible.

GEMARA: It was taught: If one sold an ox, and thereafter it was found it was a goring one, the sale is void according to Rabh. Samuel, however, said: The seller may say: "I sold it to you for slaughtering." Let us see: If the buyer was one of those that buy for slaughtering (*e.g.*, a butcher), why then should the sale be void according to Rabh? And if he was one who buys for working purposes (*e.g.*, a farmer), why should the sale be valid according to Samuel? It treats of one who buys for both purposes (*e.g.*, if he was both a farmer and a butcher). But even then, let us see the amount he paid for it, from which we can judge whether he bought for slaughtering or for work. It treats of where the meat has increased in price to the extent of the value of an ox for working. If so, what is the difference (the buyer gets the full value for his

money in any case)? The difference is, if the trouble of slaughtering and selling the meat should be taken into consideration (according to Rabh it should, and therefore the sale is void; and according to Samuel it should not). Again, let us see how was the case. If the seller has no cash to return, why, according to Rabh, should the sale be void, so that the buyer has to return the ox? Let him keep the ox for his money; as people say: "If you keep something in hand belonging to your debtor, even if it is bran, take the trouble to make money by it." It means when the seller is not lacking in cash. According to Rabh, the sale is void because the majority must always be taken into consideration, and the majority of cattle-buyers are traders; and Samuel maintains that only in prohibitory laws the majority is to be taken into consideration, but not in money matters.

Come and hear an objection from the following (First Gate, V., Mishna I.): "Should an ox gore a cow and the new-born calf be found dead at her side, and it be not known," etc. (see there, end of the Mishna, p. 106). Now, according to the theory of our Mishna, the decision of the cited Mishna would not be correct, as the majority of cattle should be taken into consideration, which conceive and bring forth living offspring. Hence the dead one found at her side is dead because of the goring. Why, then, is it considered doubtful there? The doubt was, if the ox gored the cow in front, so that the premature birth took place because of terror before goring, or if the cow was gored in the back, and the premature birth was occasioned by the goring, and therefore the extent of the injury is considered doubtful. And there is a rule that such be divided.

Shall we assume that the point of difference between Rabh and Samuel is the same as that in which the Tanaim of the following Boraitha differ? "If an ox was pasturing and another one was found killed at his side, although investigation shows that the death occurred from goring, and the pasturing ox was vicious in goring, or the death occurred from biting, and the pasturing ox was vicious in biting, it is still uncertain that this ox has gored or bitten the other." R. Aha, however, said: If there was found a camel killed at the side of a biting camel, although the latter was not yet vicious, it must be taken

for a certainty that he killed the other. The schoolmen thought majority and hazakah * identical; for as a goring or a biting animal has a hazakah to gore, bite, and kill, it is to be taken for a certainty that the gored or bitten one found at his side was killed by him, and the same is the case with the majority.

Is it not to assume that Rabh holds with R. Aha, and Samuel with the first Tana?

Nay! Rabh may say: My decision is correct, even in accordance with the first Tana of the cited Boraitha, as the reason of his decision is not majority, but hazakah—*i.e.*, there was not a majority of vicious oxen, but one, which had a habit (hazakah) of goring or biting, as hazakah and majority are not identical; but if there should be a majority, it would be taken into consideration. And, also, Samuel may say: My decision is correct, even in accordance with R. Aha, as his reason is the habit (hazakah) of that animal which was found near, and a majority would not be taken into consideration.

Come and hear an objection from our Mishna, which states that the seller is not responsible, even for seeds of flax. Does not the term “even” mean, although the majority is for sowing, and nevertheless it is not taken into consideration? Hence it opposes Rabh? In this point the Tanaim of the following Boraitha differ: “If one sold fruit, and the buyer has sown it but it did not sprout, if it was garden seed, which could not be used for eating, he is responsible; but if it was seed of flax, he is not.” R. Jose, however, said that the seller has to return to the buyer the value of the seed, as the majority buy it for sowing only. The sages, however, answered him: There are many who buy it for other purposes.

But who of the Tanaim in this Boraitha hold not the theory of majority? Shall we assume that it means R. Jose; and the sages answered *him* that there are many people who buy seeds, etc.? Then all of them hold the theory of majority, but one takes into consideration the majority of the seed (*i.e.*, the majority of seed which is bought for sowing, and the other the majority of men)? Therefore we must say that it means, the difference of opinion between the first Tana and R. Jose, or the difference of opinion between the first Tana and the sages,

* The translation of “hazakah” is chiefly “occupancy”; however, this term is applicable to everything which is the habit of persons, animals, etc.

who answered *him* (*i.e.*, the statement in the Boraitha, "and they said to him," means the first Tana, not R. Jose).

The rabbis taught: "The seller has to return to the buyer the value of the seed, but not the expenses for ploughing, sowing, etc.; according to others, however, the expenses also." Who are the others? Said R. Hisda: R. Simeon b. Gamaliel. Which R. Simeon b. Gamaliel? Shall we assume from our Mishna, which states that for seeds which could not be used for eating, he is responsible, and from the first Tana's statement, that the seller is not responsible for seeds of flax, that it is to be inferred for seeds of flax only, but for other seeds which cannot be used for eating, the Tana is also of the opinion that the seller is responsible? Then they do not differ at all. Therefore it must be said that they differ in the expenses, the first Tana holding the seller must return the value of the seeds only, and R. Simeon all the expenses also (and so R. Hisda means R. Simeon of our Mishna). But perhaps the reverse is the case—R. Simeon holds the value of the seeds only, while the first Tana holds the expenses also? This presents no difficulty; for as usual the second Tana adds something. But perhaps the entire Mishna is in accordance with R. Simeon and is not complete, but should read thus: If one sells fruits and they were sown and did not sprout, even if they were seeds of flax, he is not responsible. Such is the decree of R. Simeon b. Gamaliel, who holds that only for garden seeds that cannot be used for eating the seller is responsible. Therefore we must say that R. Hisda means R. Simeon b. Gamaliel of the following Boraitha: "If one delivered wheat for grinding of fine meal, but the miller did not properly grind it, but made it into bruised grain or bran; or if meal were delivered to a baker and he did not bake it properly, but when he took it out it fell to pieces; or if an ox were delivered to a slaughterer, and he made it illegal, each of these persons is responsible, as they are considered bailees for hire." R. Simeon b. Gamaliel said, that they not only have to pay the damages, but also for the shame of the owner in the eyes of the guests who were invited to the meal, as well as for the shame of the guests themselves; and so the same R. Simeon used to say: There was a great custom in Jerusalem, if one ordered a banquet for guests, and the host spoiled it, he had to pay for his own shame, and for the shame

of the guests. There was also another great custom in Jerusalem: "a flag was put at the door where a banquet was to be given, and the invited guests had to enter only when the flag was still at the door, but when it was taken off they were not to enter any more."

MISHNA II.: If one buys fruit, he has to accept a quarter of a kabh of dust on a saah; of dry figs, he has to accept ten wormy ones in a hundred; on a cellar of wine, he must accept ten harsh ones on each hundred; if he sells him earthen jugs made in Sharon he has to accept ten unglazed ones on each hundred.

GEMARA: R. K'tina taught: By a quarter of a kabh of dust is meant peas, but not earth proper. Is that so? Did not Rabba b. Hyya Ktuspha'h say in the name of Rabba: If one has cleaned off little stones from the barn of his neighbor he has to pay him the value of wheat (*i.e.*, as if they were there, he may put them in the measure, but to put them intentionally he is not allowed)? Peas, he has to accept a quarter of a kabh on a saah, but dust he has also to accept, although a less quantity. You say less than a quarter of dust, but did not the following Boraitha state: "If one sells wheat, he has to accept a quarter of a kabh of peas on a saah; if barley, a quarter of chaff on a saah; and if lentils, a quarter of dust." Is it not to assume that a quarter of dust is to be accepted for wheat and barley also? With lentils it is different, because they are not cut, but torn out from earth, and therefore usually a great deal of dust remains with them, which is not the case with wheat and barley; but if it is so, infer from this that for wheat and barley no dust must be accepted at all, while it is stated above that less than a kabh is to be accepted? Nay, from the statement that for lentils he has to accept a quarter nothing is to be inferred; this being stated, lest one say because there is usually much dust more than this quantity is to be accepted, it comes to teach us that it is not so.

R. Huna said: If the buyer has found more than the above prescribed quantity and sieves it, he may sieve the whole quantity he bought, without leaving any dust at all, and the seller has to fill the measure without allowing for the prescribed quantity. According to some it is the strict law, as usually one gives his money for clean fruit, but if for a trifle of dust, as

much as a quarter of a kabh on a saah, the buyer is not very particular and does not take the trouble to sieve it; but in our case, when he is compelled to trouble himself with sieving, he may make the whole fruit extremely clean; and according to others, it is a fine, as usually no more than a quarter of a kabh ought to be found in a saah, and when there was found more, it is presumed that the seller put it in intentionally, and therefore he is fined by the rabbis.

Come and hear an objection from the following Boraitha: "If a planter undertakes to plant a field with fruit trees, the owner of it must accept empty space for ten trees on each hundred, but if, however, it was found empty for more than this, he has to plant trees on the whole empty space." Hence is R. Huna's above statement law? Said R. Huna b. R. Jehoshua: This is not a support to R. Huna, as an empty place for more than ten trees is to be considered as a separate field, and the planter who undertook to plant the owner's fields is to be considered as if he had to begin the planting in this empty field, and therefore he has to plant the whole field, which case is not similar to that of R. Huna.

"*If he sold a cellar of wine,*" etc. Let us see how is the case. Whether the seller said to the buyer, "I sell you a cellar of wine" or "*this* cellar of wine," it is a difficulty from the following Boraitha. "If he said 'I sell you a cellar of wine,' all of it must be good; if '*this* cellar of wine,' he must give him wine which is sold in the retail stores; but if he said, 'I sell you *this* cellar,' even if it was found to be all vinegar, the sale is valid." Our Mishna speaks of the case wherein the seller said, "*a* cellar of wine," and there is no contradiction of the cited Boraitha as it should read, and the buyer has to accept the ten spoiled ones in the hundred. But has not R. Hyya taught: If one sells a barrel of wine, he must give the buyer all good wine? With one barrel it is different, as a barrel contains only one kind of wine; but has not R. Z'bid in the name of the school of R. Ossiah taught in "*a* cellar of wine" all must be good, in "*the* cellar of wine" the seller must give the buyer all good wine, but the latter must accept ten bad in the hundred; and this is the word *Outzar* ("treasure of wine") which the sages have taught in our Mishna? Therefore it must be said that our Mishna treats of the case wherein the seller said

"this cellar," and the contradiction from the above Boraitha in the case, if "this cellar," presents no difficulty, as R. Z'bid says, if the seller told the buyer, "I sell you wine for keeping," and the Boraitha says the words "for keeping" were not said, and therefore (the Halakha prevails thus) if the seller said, "a cellar of wine for keeping," all of it must be good; if "*this* cellar of wine for keeping," the buyer must accept ten in the hundred; if "*this* cellar of wine," without the addition "for keeping," the seller may give the buyer wine that is sold in retail stores.

The schoolmen propounded a question; How is it if the seller said, "a cellar of wine," without the addition "for keeping"? On this point R. Aha and Rabhina differ. According to one the buyer has to accept ten in the hundred, and according to the other he has not, the one who says "he must accept" inferring it from R. Z'bid, who states in the case of "a cellar of wine," all of it must be good, and it was explained above that he speaks of the case in which the seller added "for keeping," from which it is to be inferred that if these words were not added, the buyer must accept; and the other, who says the buyer must not, infers from the above Boraitha, which states in the case of "a cellar of wine" all of it must be good; and it was explained above that the Boraitha treats of the case wherein "for keeping" was not said. But to him who infers from R. Z'bid, is not the Boraitha contradictory? He may say the Boraitha is not completed, but should read thus: This is said, if the seller told the buyer "for keeping," but if not, the buyer must accept, and if the seller said "this cellar of wine" without any addition, he may give the buyer wine which is sold in the stores; but to him who infers from the Boraitha, is not R. Z'bid contradictory who, as explained, said that the seller told the buyer the wine was "for keeping"? He may say that the same is the case if the seller did not say "for keeping," and the above explanation was only in order that the Boraitha and R. Z'bid might not contradict each other; in reality, however, R. Z'bid does not agree with the Boraitha.

R. Jehudah said: On wine which is sold in stores the usual benediction may be made. (The benediction is, "Blessed be Thou the Lord our God King of the Universe who hast created the products of the vine,") and R. Jehudah means to say that

although the wine in stores is usually bad, it is still called the product of the vine. R. Hisda, however, said: What have we to do with such a wine (*i.e.*, how can such wine be called a product of the vine)?

An objection was raised: In the case of moulded bread and sour wine, and any dish of which the appearance is spoiled, the benediction should be "That all is created by His words" (hence it contradicts R. Jehudah). Said R. Z'bid: R. Jehudah admits that over wine made of kernels, which is usually sold on the corners of streets, the right benediction may be said. Said Abayi to R. Joseph: "There is R. Jehudah, and there is R. Hisda, each of them with his opinion; I would like to know how is yours, master?" And he answered, "I am aware of the following Boraitha: 'If one examine a barrel of wine for the purpose of separating heave-offering from it, for all others, and he did so for a month or two, and thereafter it was found that the wine turned into vinegar, three days is considered certain, and further on doubtful.' How is this to be understood? Said R. Johanan thus: The first three days from the examination it is to be considered certainly wine, and thereafter it is to be considered doubtful. Why so? Because usually wine becomes sour from the top, and when he tasted it, it was not sour, and if you say it had become sour immediately after he tasted it, the smell only was vinegar-like, but the taste still of wine (as the sages had a tradition that less than three days from the beginning it becomes not vinegar) and such is considered wine. R. Jehoshua b. Levi, however, said that all he separated in the last three days is certainly vinegar, but previous to that it is doubtful. Why so? Because usually wine begins to turn sour from the bottom, and maybe when he tasted it it was sour already, of which he was not aware; and even should I admit that wine begins to turn sour from the top, my decision is still correct as it may be that it began to turn sour immediately after being tasted, and I hold that if it smells of vinegar, though the taste is still of wine, it must be considered vinegar" (hence according to R. Jehoshua b. Levi the wine which is sold in stores is not considered wine at all, and according to R. Johanan it is considered wine).

The sages of the South taught in the name of R. Jehoshua b. Levi thus: The first three days it should be considered as wine,

the last three days as vinegar, and in the days between as doubtful. But does this statement not contradict itself? The first three days it certainly is wine, hence if the smell is of vinegar and the taste of wine, it is considered wine; and thereafter they said, the last three days it is certainly vinegar, from which it is to be inferred that if the smell is of vinegar and the taste of wine, it is considered vinegar. The case was that it was found wholly strong vinegar, and it is stated above that it takes no less than three days after it turns sour to become wholly vinegar; hence it is to be supposed that in the last three days it was already vinegar. However, according to which of these two was the conclusion of R. Joseph? In this, also, R. Mari and R. Z'bid differ, one saying that his conclusion was in accordance with R. Johanan, and the other saying it was in accordance with R. Jehoshua b. Levi.

It was taught: If one sells a barrel of wine and it turns sour, according to Rabh the first three days it is considered under the control of the seller, and thereafter "it is considered under the control of the buyer." Samuel, however, maintains that the seller is not responsible even when it was still in his barrel, as this is to be considered the fate of the buyer.

R. Joseph acted in accordance with Rabh concerning beer of dates, and according to Samuel with wine, the Halakha, according to Samuel, however, prevails in every respect.*

MISHNA III.: If one sells wine and it turns sour, the seller is not responsible; if, however, it was known that the nature of his wine was to turn sour (and the buyer was not aware of it), the sale is void. If he said, "I sell you wine, prepared with spices, in good order," the wine must remain in good order until the feast of Pentecost. (Afterward it may become spoiled by heat.) If the seller sold the buyer old wine, it must be from last year; and if he said "very old," it must be aged not less than three years.

GEMARA: Said R. Jose b. Hanina: All this is said of the case wherein it was delivered to the buyer in his own jugs; but if it was placed in the jugs of the seller, the buyer might say: "Here are your jugs and your wine." Why then may not

* The text treats concerning the benedictions on wine, beer, etc., for which the proper place is the Tract Benediction, and to which it will be transferred

the seller claim: You ought not to keep it so long? It means that while selling, the seller told the buyer "for keeping." But what compels R. Jose to such a difficult interpretation, in which the jugs were the buyer's, and the seller says "for keeping"? Why is it not simply said that the jugs were the seller's and he said nothing? Said Rabha: It is because the further statement of the Mishna, "that if it was known that the nature of the seller's wine was to turn sour the sale is void" was a difficulty to him. Why, then, let the seller claim he ought not to keep it so long? We must then say, that the Mishna treats of the case wherein the seller told the buyer "for keeping" (he therefore interpreted the whole Mishna, that such was the stipulation), and infer from this that so it is. He, however, differs with R. Hyya b. Joseph, who said that the fate of one causes the spoiling of his wine; as it is written [Habakkuk, ii. 5]: "And even the wine of a proud man rebels."

Said R. Mari: If one is proud, he is not tolerated even by his family, as the above verse reads "the proud man whose house will not stand," which is to say that he is not tolerated by his household. R. Jehudah in the name of Rabh said: A commoner who disguises himself in the garment of a scholar, cannot enter into the habitation of the Holy One, blessed be He; and this is deduced from an analogy of expression, *Nvie*, which is to be found in Ex. xv. 13. The Hebrew expression in the above cited verse is also *Y'nvie* (literally, "dwelling," "inhabit").

Rabha said: "If one sells a barrel of wine to a storekeeper (with the stipulation that he shall sell it at retail and then pay the owner), and a half or a third of the wine turns sour, the law is that the seller must accept the return of his wine; and this is said only in case the faucet was not changed by the storekeeper, but if it was changed and placed near to yeast, there is no responsibility, and there is also no responsibility if the storekeeper kept the wine over the market day." He said again: "If one has accepted wine for half interest, with the intention of taking it to the suburb of Dwulchpht (where usually wine is dear), and by the time it reached there the price was lowered, the law is that the owner has to accept the return of the wine." The schoolmen propounded a question: How is it when the same was vinegar? Said R. Hillel to R. Ashi:

When we were at R. Kahana's he said to us, the same is the case with vinegar, as he agrees with R. Jose b. Hanina's statement above.

"*Old wine*," etc. A Boraitha in addition to our Mishna states that if it was said, "very old wine, it must keep its good quality until the feast of tabernacle in the third year."

MISHNA II': If one sells to one a place for the purpose of building a wedding-house for his son or a widow-house for his daughter, and the same is the case if a contractor undertakes to build such for him, the size must be not less than four ells in length by six in breadth; such is the decree of R. Aqiba. R. Ishmael, however, maintains that this is the size of a stable. If one wishes to build a stable for cattle, he builds it four by six. The smallest house is no less than six by eight, a large one eight by ten, and a triclinum (restaurant) ten by ten, and the height must be a half of its length and of its width. An example of this, said R. Simeon b. Gamaliel, was the building of the Temple.

GEMARA: Why does the Mishna state "a wedding-house for his son and a widow-house for his daughter"? Let it state a wedding or a widow house for his son or daughter. The Mishna incidentally teaches us that it is not a good custom for a son-in-law to dwell with his father-in-law, as it is written in the book of Ben Sira: "I have weighed everything on the scale and did not find a thing to be lighter than bran; however, a groom who resides in the house of his father-in-law is lighter than bran, and still lighter than he is an invited guest who brings with him an uninvited companion, and still lighter is the one who answers before he has heard thoroughly the question, as it is written [Prov. xviii. 13]: 'When one returneth an answer before he understandeth (the question), it is a folly unto him and a shame.'"

"*If one wishes to build a stable*," etc. Who said this? According to some, R. Aqiba himself, and he said so; and although this is the size of a stable for cattle, it nevertheless happens that human beings live in such a building (and as the seller or the contractor did not stipulate the size, the minimum may be taken). Others say R. Ishmael taught this saying: That if one wishes to build a stable, it is the size of four by six.

"*Triclinum*," etc. There is a Boraitha: For a *quantir*,

twelve ells square is needed. What does it mean? A fore yard?

"*An example of this,*" etc. Who taught this? Some say R. Simeon b. Gamaliel, and it should read thus: Whence is this deduced? Said R. Simeon b. Gamaliel: All must be judged according to the building of the Temple, and some say that the first Tana taught an example of it (and he was about to finish his statement with "the building of the Temple," but R. Simeon b. Gamaliel interrupted him saying:) Do you want to compare all common buildings with the building of the Temple; do all people build such buildings?

We have learned in a Boraitha: Anonymous teachers say the height must be not less than the length of the crossbeams of the ceiling. But why not say, simply, the height must be as the width? If you wish, it may be said that usually a house is wider at the top than at the bottom; and if you wish, it may be said that, because the ends of the beams are placed in the enclosures of the wall, they are longer than the width of the house.

MISHNA *IV.*: If one possesses a well, situated on the other side of his neighbor's house (by inheritance, or even bought from him with a path), so that when water is needed he must pass through the house, he may enter and leave at the time people usually enter and leave. However, he is not allowed to take his cattle to the well, but he has to take water for them outside of the house and water them. The owner of the well, as well as the owner of the house, has a right to put a lock on it.

GEMARA: A lock on what? Said R. Johanan: Both locks may be put on the well. It is right that the owner of the well should put a lock on his well, so that no one can use the water; but for what purpose should the owner of the *house* put a lock on it? Said R. Elazar: Lest his neighbor, while passing his house to the well in his absence, should remain alone with his wife.

MISHNA *VI.*: If one has a garden inside of his neighbor's garden, he may enter and leave only when people are wont to do so. He must not take buyers with him to his garden, and he also has no right to pass through his neighbor's garden for the purpose of entering another field conjoining this one, when he has no business in his own garden; and only the owner of

the outside garden has a right to sow the path. If, however, a path was designated to him by court, on the side, with the consent of both parties, then he may enter and leave whenever he pleases and may also take with him buyers; however, the right to pass through to another field is not given, and neither of them has the right to sow the path.

GEMARA: R. Jehudah in the name of Samuel said: If one says, "I sell you a place of one ell for digging a well to water your dry land," it must contain the width of two ells, and he also has to add him two ells from his field to the edges of the well, on which to erect walls to prevent the overflow of the water; and if he said, "I sell you an ell for making a sewer," it must be one ell wide and one-half ell to each edge. But who has a right to sow the edges (while the walls were not as yet made)? R. Jehudah in the name of Samuel said: The owner of the field; and R. Nhaman in the name of Samuel said: The owner of the field may plant trees there, but not sow it, as by sowing he harms the water.

R. Jehudah in the name of Samuel said again: If the walls of a channel fall, the owner of it may repair it from the material of the field upon which the walls were placed; as certainly they fall on the same field where they were placed (but the material was scattered by the wind all over the field). R. Papa, however, opposed, saying that the owner of the field may claim that the water of "your well has underwashed the material and caused it to fall"; therefore he gave another reason, that such a stipulation must have been in existence when he hired that place, for otherwise he would not have wasted his money.

MISHNA VII.: If there was a public thoroughfare through one's field and he took it for himself and designated another one at the side of his field, what he has given is considered the public's, and to that which he took for himself he does not acquire title. If one sells a path in his field for a private thoroughfare it must be four ells, for the public it must be no less than sixteen. A way for the government has no limit. The way for carrying a corpse to the grave has also no limit; however, the space where the people stand for condoling was determined by the judges of Ziboras of a space where four kabhs may be sown.

GEMARA: Why should he not acquire title to that thor-

oughfare he took for himself, when he designated another one for the public; let him take a stick with which to drive off intruders, or do you want to infer from this that one cannot take the law in his own hands, even when he suffered damage? Said R. Zebid in the name of Rabha: It is to be feared that if this would be allowed, one would give to the public a crooked way; but R. Mesharshia in the name of Rabha said that our Mishna treats of a case wherein the owner of the field has designated such. R. Ashi, however, maintains that a way which is placed at one side is considered crooked, because it is near to one who resides near to this side, while it is far to him who resides on the other side, (and therefore he does not acquire title) to that which he took. But let him say to the public, "take your way and return mine" (and the Mishna states what he has given is lost). It is in accordance with R. Eliezer of the following Boraitha: "R. Jehudah said in the name of R. Eliezer, if the public has chosen a way for itself, what was done remains." But may the public be robbers, according to R. Eliezer? Said R. Gid'i in the name of Rabh: He speaks in case the public has lost a way in this field (*i.e.*, some time ago there was a thoroughfare which afterwards was lost). If so, why then said Rabba b. R. Huna in the name of Rabh that the Halakha does not prevail with R. Eliezer? The one who has taught this statement was not aware of the other statement (*i.e.*, R. Gid'i does not approve the statement of Rabba b. R. Huna in the name of Rabh). But according to Rabba b. R. Huna, what is the reason of our Mishna's statement, that of R. Jehuda, who said above (p. 145) that a path of which the public took charge must not be spoiled? By which act did the public acquire title to the thoroughfare, according to R. Eliezer? By passing, as we have learned in the following Boraitha: If one passed (in an ownerless field) on its length and breadth he acquired title to the place he has passed, so is the decree of R. Eliezer. The sages, however, maintain that passing has no effect at all, and title is not acquired unless he makes a hazakah. Said R. Elazar: The reason of R. Eliezer is the following verse [Genesis, xiii. 17]: "Arise, walk through the land in the length of it and in the breadth of it, for unto thee I will give it." The sages say this cannot be taken for a support, however, as Abraham was beloved by Heaven, and it was said to him for

the purpose of making easier for his children the subjection of the land. Said R. Jose b. Hanina: The sages admit to R. Eliezer in case of a footpath between vineyards, because it was made for passing, title is also given by passing. When such a case came before R. Itz'hak b. Ami he decided that the plaintiff should get a footpath upon which he should be able to carry a bundle of branches on his shoulders, which in turning here and there should not touch the walls. But this is said in a case wherein the places for the walls are not yet designated; but if they were, the space should be given him, so as to put one foot after the other.

"For a private," etc. There is a Boraitha: Anonymous teachers say: "As much as an ass with its load could pass." The judges of the exile said: Two cubits and a half. And R. Huna said: The Halakha prevails with them. But did not R. Huna say elsewhere that the Halakha prevails with the anonymous teachers? The limit of both is "equal."

"A public thoroughfare is sixteen ells." The rabbis taught: A private way is four ells, a way from one city to the other is eight ells, a public way is sixteen ells, and the way to the cities of refuge (Num. xxxv. 11) thirty-two. [Said R. Huna: Whence is this deduced? From the Scripture (Deut. xix. 3): *"The way to them."* It should be "a way," and the word "the" makes it double.] The way of the government has no limit, as the king has the right to erect partitions, houses, and no one has a right to prevent him, and the way for burying a corpse has no limit, because of the honor of the dead.*

MISHNA VIII.: If one sells a place for digging a grave, or an undertaker makes a grave for one, the inside of the cave must be four by six, and opening into it eight niches for coffins, three on each side and two at the top and bottom. The length of the niches is four ells, the height seven spans, and the width six. R. Simeon, however, said: The inside of the cave must be six by eight, the niches must be thirteen, four on each side, three on the upper side, and one on the right side of the door and one on the left. He also makes a fore yard at the mouth of the cave six ells square, as much as the coffin with its carrier needs. He also has to open to this fore yard two

* The continuation of the text about graves and condolence, etc., we have transferred to Tract Great Mourning, page 60.

caves from two sides. R. Simeon, however, said four to all its four sides. R. Simeon b. Gamaliel, however, maintains that all must be done according to the rock (*i.e.*, if the earth is soft more niches could be made, but if rocky the number must be limited accordingly).

GEMARA: The two niches which R. Simeon requires, one on the right side of the door, etc., how shall he dig them? If their length should be dug from the wall of the cave under the fore yard, then they will be trodden down; furthermore, there is a Mishna to the effect that one who stands in the yard of a grave is clean, but if the niches should be dug under the yard the one who stands above would not be clean. Said R. Jose b. R. Hanina: He made the niches like an upright bolt; *i.e.*, placed the bodies in an upright position. But did not R. Johanan say that asses are buried in like manner? According to him, the niches should be made in the corners. But then each of them would come in contact with the other. Said R. Ashi: If he makes those in the corners deeper (according to R. Simeon, who said that four niches must be on each side), if they were all equally dug they would come in contact. It must be said that he digs some of them deeper, and the same may be said here.* R. Huna b. R. Jehoshuah, however, maintains that he makes the niches crooked. (Says the Gemara:) This statement does not hold, as according to it he would have to make eight inches in the space of eleven and one-fifth ells, which is impossible.†

* The text is so complicated here that the commentators have to make many illustrations, and after all the matter is hardly understood. However, according to our method we could not omit this, as it is essential from the historical point of view to know how these graves are made. We have done our best to make it intelligible.

† In the text are also mathematical calculations by the rule that one ell square contains one ell and two-fifths when crooked, which is not exactly correct. We have already mentioned this in a foot-note in Erubin, and therefore we have omitted the whole discussion here.

CHAPTER VII.

RULES AND REGULATIONS CONCERNING ROCKS AND PITS IN GROUND SOLD; THE QUANTITIES OF GREATER OR LESS MEASURE WHICH MAY OR MAY NOT VOID A SALE OF FIELDS, VILLAGES, ETC.

MISHNA I.: If one says: "I sell you earth the size where one kur can be sown, and there were crevices ten spans deep, or rocks ten spans high, they are not measured, but if less than that size they are measured. If, however, he said to him, "about the size of a kur," and there were crevices or rocks even more than the size of ten spans, they are measured.

GEMARA: Said R. Itz'hak: The statement of the Mishna about rocks and crevices which are measured when they are less than ten spans holds good only when all of them together do not measure four kabhs, but not if they do. Said R. Uqba b. Hama: Even then they are measured only when they are scattered within five kabhs space (but in less they are not measured); and R. Hyya b. Abba in the name of R. Johanan says that five kabhs do not suffice, and they are measured only when they are scattered within the greater part of the field, which is at least sixteen kabhs, as a kur is thirty kabhs; and R. Hyya b. Abba himself questioned: How is the law according (to R. Johanan's theory) if the greater part of the rocks in question were scattered within the smaller part of the field, and the smaller part of them within the larger part of the field (and if altogether they measured four kabhs)? These questions are not decided.*

There is a Boraitha: "If there were a single rock (but it bears a separate name; *e.g.*, 'the west rock') even if of less than ten spans, it is not measured; and also if the rock were placed

* In the text are some other questions: If the rocks were placed round, or square, etc.; and these need many illustrations, and all remain at last undecided. As they are of no importance, we have omitted them.

near to the boundary, whatever size it may be it is not measured." *

MISHNA II.: "I sell you earth of the size wherein a kur can be sown, measured with a line." If there were a trifle less, he may deduct; if a trifle more, the buyer has to return it. If, however, the seller says "about this size, a little more or less," even if there were less than a quarter of a kabh on each saah, the sale is valid; but if it were more than that size, an account must be taken. In case the buyer has to make return, it shall be in money; however, if he wishes to return him land, he may do so. And why was it said that the buyer should return the seller money? To favor the seller, so that if there were a trifle more the buyer should not have the right to return him this trifle, which the seller could not use; but if there were a kabh and a half more than the prescribed size, it means in the case of nine kabhs of land in a field and a half kabh in a garden, and according to R. Aqiba even a quarter of a kabh, then the buyer may return the land, and not only the land which is in excess of the prescribed size, but even that of this prescribed size itself is to be returned with the other.

GEMARA: The schoolmen propounded a question: If the seller said "the size of a kur," without any addition, how is the law? Come and hear. If the seller says, "I sell you an estate the size of a kur," or "about the size of a kur, a little less or more, I sell you," and thereafter it were found a quarter of a kabh less or more to a saah, the sale is valid. Hence we see that even if he does not add to the words "the size of a kur," it is the same as if he would say "about." Nay, the Boraitha is to be explained thus: The last part of the Boraitha explains the first part. If one says, "I sell you of the size of a kur," "about" is to be understood in case he should add a trifle less or more. R. Asli objected: If this were so, why the repetition "I sell you, I sell you"? Therefore the Boraitha is to be explained as above, that the size of a kur means "about," and so it is.

"It shall be in money." We see from this that the advantage of the seller and not the buyer is taken into consideration; but

* The text contains questions of no importance—*e.g.*, if the rocks were placed round, crooked, etc.—which remain undecided. We have therefore omitted the whole discussion.

valid? If, however, the estate is larger, the court compels both the seller to sell and the buyer to buy; hence we see that the advantage of both is taken into consideration? (*I.e.*, that even have we not learned in the following Boraitha: If there were less or more than seven kabhs and a half on a kur, the sale is if the seller insists that the excess should be returned to him, he is not to be listened to if it is an advantage for the buyer to have it.) The Boraitha treats that at the time it was found over the prescribed size, the estate was lower in price and the seller willing to sell. Therefore we say to the buyer, "You may reckon it at the existing price," and the same is said to the seller, "If you do not wish the estate to be returned to you, you must accept the existing price." But have we not learned in another Boraitha that if the buyer compensates the seller, he must reckon at the previous rate? That Boraitha speaks that when the reverse was the case, the price was low at the time of the sale and became higher after it was known that there was an excess over the prescribed size.

"*It means in the case of nine kabhs,*" etc. Said R. Huna: This applies even in a valley which is of more than ten kurs. R. Na'hman, however, says seven and a half to each kur; but if there were a kabh and a half more (which counts nine kabhs) even to one kur, all must be returned, even if to the other kurs the addition were not over the prescribed size. Rabha objected R. Na'hman from our Mishna, which states that if he left nine kabhs in a field, etc. Does not the Mishna mean at least two kurs as the size of the usual field? Nay, it means one kur. Farther on, in a garden, a half of a kabh is given as the minimum of excess. Does it not mean at least two saahs, as usually a garden is called of that size? Nay, it means one saah, and according to R. Aqiba one quarter. Does it not mean, if the garden was a saah? Nay, it means if it was half a saah. R. Ashi questioned: If one sold a field, and afterwards, but before the money was paid, it became a garden, and there were found more than a quarter to a saah, but it should not reach the size of nine kabhs or *vice versa*, how should the prescribed size be reckoned—as that of a field or that of a garden? This question remains undecided.

There is a Boraitha: "If the estate over the prescribed size sold was conjoined with the other estate of the seller, even if

that were but a trifle, the buyer has to return the seller the estate." R. Ashi questioned: How is the law if there were a well between this estate sold and the other estate of the seller, a channel, a public thoroughfare, or a row of trees, should these constitute lines of demarcation or not? This question remains undecided.

"And not only the land which is in excess," etc. How is this to be understood? Taught Rabhin b. R. Na'hman: Not only that which was over the prescribed size the buyer returns the seller, but all the quarters to each kur, although the rest be not over the prescribed size, he must return.

MISHNA III.: "I sell you the estate with a measurement, a trifle more or less." The last words, "more or less," nullify those preceding them. "I sell you a trifle more or less to be measured with a line." The last words here nullify the preceding ones (and the seller must give the purchaser a just measurement; so that if the land were in excess, the excess must be returned, and if less the seller must supply the deficiency), such is the decree of ben Nanās.

GEMARA: Said R. Abba b. Mamal in the name of Rabh: "The colleagues of ben Nanās differ with him." What came he to teach us? Have we not learned in the Middle Gate, p. 269, Mishna 8, that it happened in Ciphorius that one rented a bath-house for twelve golden dinars a year? The payment was to be one dinar monthly; and thereafter the year was made intercalary. When the case came before R. Simeon b. Gamaliel and R. Jose they decided that the payment for the intercalated time should be made at the same rate as for the ordinary time. If from that Mishna one says that the last words, "one dinar monthly," are to be interpreted as a retraction of the first words, "twelve a year," the last words, "a dinar monthly," may also be interpreted as explaining the former, "twelve a year" (over which the sages differed with ben Nanās); however, here, in that the last words cannot be interpreted as an explanation, but as a retraction of the former, the sages agree with him. He comes to teach us that they differ also in this case. R. Jehudah in the name of Samuel said: This which is taught in our Mishna is in the words of ben Nanās, but the sages say that the shorter expression must always have the greater weight (*i.e.*, "with a measurement" is shorter than "a

trifle less or more”), no matter whether the shorter phrase were said before or after the longer one. Says the Gemara: Shall we assume that with the expression “this” Samuel meant to say that he himself does not agree with him? Do not both Rabh and Samuel say (p. 188) that if one said “a kur for thirty selas,” he may retract even at the last saah; and if he added each saah for one sela, to all which was measured title is acquired, which corresponds with the decision of ben Nanas? Therefore we must say that he meant to say “this,” and I agree therewith. But is that so? Did not Samuel say (Middle Gate, p. 270): “The decision was so made . . .” but if they had appeared in the beginning, would it be entirely the owner’s; and if in the end, the renter’s? (This, at all events, cannot correspond with ben Nanas’ decision.) Therefore it must be said again that by the word “this” he means that “I do not agree,” and the reason of his decision in the case of each saah for selah is because that which was measured is considered already in his hands, and the same is the case with the rent for the intercalary month; if at the end of the month, it belongs to the renter, because it is already in his hand. R. Huna said: It was said in the college of Rabh: If one said: “I sell this to you for an *istra* a hundred *moahs*, he must give him a hundred *moahs*; but if he says a hundred *moahs* an *istra* he has to give him an *istra* although it is less in value than a hundred *moahs*.”

What came he to teach us—that the last expression must be considered? Has not Rabh said this already concerning the case of the cited Mishna (page 270): “If I were there, I should give it to the owner of the house” (and that is because the last words were “a dinar monthly”)? Lest one should say that in one case the last words (“hundred *moahs*,” or *vice versa*) are to be considered as an explanation to the first words, he comes to teach us that it is not so.

MISHNA IV.: If one says, “I sell you this estate, the size of a kur, with its marks and boundaries;” and afterwards it were found that the size is less than stipulated—if it were less than a sixth of the whole size, the sale is valid; but if there were a sixth wanting, the buyer may deduct from the payment.

GEMARA: It was taught: R. Huna and R. Jehudah differ in the explanation of our Mishna. According to the former

the Mishna means that an exact sixth should be considered as less than a sixth, and the Mishna is to be explained thus: "With less than a sixth wanting, a sixth inclusive, the sale is valid." If, however, more than a sixth is wanting, it may be deducted. According to R. Jehudah the Mishna means that an exact sixth is to be considered as more, and it is to be explained thus: "With less than a sixth wanting the sale is valid; a sixth, however, or more wanting is to be deducted."

An objection was raised from the following Tosephtha: "With its marks and boundaries, and there was a sixth less or a sixth more, it parallels a case wherein the court appraises an estate, and the sale is valid." Now we know that in a case wherein the court appraises, if there were an error as to an exact sixth, it is considered as if it were more, and the appraisement is void; hence this contradicts R. Huna? R. Huna may say that there is no contradiction, as the Tosephtha ends with the words "the sale is valid," and if this paralleled the case wherein the court appraises, how could it be valid in case there were more than a sixth? Does not the law provide that in the case of an error of the court in more than a sixth, the appraisement is void? It must be said then that it is parallel in one respect but not in the other; and it is to be explained thus: It parallels the case wherein the court appraises with an error of less than a sixth (which does not affect the appraisement), but it does not parallel the case in which the error of the court is of a sixth or more and affects the appraisement, which differs from our case, as the purchaser has only to deduct the money value of the deficiency, while the sale is still valid.*

R. Papa bought an estate from some one who told him that it measured the size of twenty saahs. After it was measured it was found that there were only fifteen; and the case came before Abayi, who decided that the sale was valid, because the seller had used the qualifying words "as you see its marks and boundaries." But have we not learned that if there were more than a sixth lacking its value is to be deducted, and here there is a fourth part? In the first case the condition is not known to the buyer before the sale; but in the latter case, as the condition was known to R. Papa and he saw it at the time he

* We are compelled to explain this in accordance with R. Gershom, as Rashbam's explanation is still more complicated.

bought, it must be supposed that he had considered and accepted it. Rejoined R. Papa: But did he not tell me that it measured twenty? He probably meant to say that "these fifteen are better than twenty elsewhere."

There is a Boraitha: R. Jose said: "Some brothers divided their inheritance by lot, and when to each of them his lot fell, all of them acquired title to their shares." Why so? Said R. Elazar: At the time the land of Israel was allotted to the tribes. But was there not also the Urim v'tumim, as it is said farther on that the high priest Elazar had on the Urim v'tumim, and then the lots were cast? Said R. Ashi: By their arrangement prior to allotment (whereby the estate was divided into shares of equal value) they had prepared themselves that each should acquire title to the share which the lot should cast for him, and therefore no other ceremony was necessary.

It was taught: To two brothers who had divided their inheritance between them came a third brother (of whose existence they were not previously aware). Their division is null and void according to Rabh. Samuel, however, maintains that each of the two must relinquish a third of his inheritance to the third brother (*e.g.*, they inherited six fields, and each of them must give one of these to the newcomer, so that the three brothers may have two fields apiece). Said Rabha to R. Na'hman: According to Rabh, who says that the division is null and void, it must be said he holds that since all of them did not share in the first division, the inheritance must be redivided. Would the same be the case with three partners, two of whom have divided (in the presence of three persons who are considered a Beth Din) in the absence of the third one, and there is a decision (Middle Gate, p. 74) that such holds good? The cases are dissimilar. In the latter case the partners divided the property into three shares, and as it was done in the presence of a Beth Din the division holds good; but in the former case the two brothers had divided the inheritance into two parts only, as they were unaware of the third brother's existence.

Said R. Papa to Abayi: According to Samuel's decision that the first division is valid, it must be said he holds that such an act, done in accordance with the law, must not be abrogated, although thereafter it appears that the brothers took more than belonged to them; but did not both Rabh and Samuel say: If

one says, "I sell you a kur for thirty selas," the seller may retract even at the last saah (above, p. 235)? (We see then that even when done in accordance with the law an act may still be abrogated.) There is, however, here a difference. The rabbis enacted that law to please both the seller and the buyer. (*I.e.*, in case the price should become lower, before the buyer has received the property, it is to his advantage to retract; and in case the price becomes higher, the advantage is for the seller. Hence this law is beneficial to both.)

It was taught: If brothers divided their inheritance and a creditor of their father came and took away the share of one of them, according to Rabh the former division is null and void. Samuel, however, said that such was this brother's lot, and it did not concern the other. R. Assi, however, maintains, not as Rabh, that the division is void, and they must divide the remainder, and not as Samuel, that it does not at all concern the other one; but that the second brother must surrender one quarter of his estate and a quarter of the money he has inherited. Rabh holds that the heirs, even after their division, are still to be considered heirs (hence if one of them has lost the property through his father's debt, he is still an heir to the remainder), while Samuel holds that at the time they divide they are considered buyers (each of them buying his share of his brother) without any security; and consequently each has no further concern after the division. R. Assi was doubtful whether they are to be considered heirs of buyers; therefore the half which ought to be taken from the one who did not suffer loss is considered doubtful money, and there is a rule that doubtful money is to be divided. Said R. Papa: The Halakha concerning the two cases, that of the third brother as well as that wherein the share of one was taken away by their father's creditor, prevails in accordance with Samuel, who says the division holds good, and it is for them to divide from their shares in payment of the debt. Amimar, however, said: The Halakha prevails in accordance with Rabh, who said that the division is void and the property must be redivided, and so the Halakha prevails.

The rabbis taught: If there are three who have qualified as a Beth Din to appraise the estate of one deceased, for the support of his widow and daughters, and if one says that in his opinion the estate is worth twenty-five selas (a moanah of

100 zuz), and the two others say two hundred or *vice versa*, the opinion of the individual is of no effect; but if one appraises the estate at one hundred zuz, which are twenty-five selas, the second for twenty, and the third for thirty, the value is fixed at one hundred zuz. R. Eliezer b. R. Zadok, however, says that it should be taken for ninety zuz, and anonymous teachers say that a third of the difference between the second and third valuations must be added to the second, which will give $93\frac{1}{3}$ zuz. The reason of him who says the estate is worth one hundred zuz is that the opinion of the arbitrator is to be taken into consideration, and the reason for R. Eliezer's opinion that the estate is worth ninety zuz is that he who appraised it at eighty underestimated by ten zuz, while he who appraised it at 100 overestimated by ten zuz, and as there is a majority who appraised it at not more than 100 zuz, the third, who appraised it at twenty zuz over a moah, is not to be taken into consideration at all. Why not say that the one who said 100 zuz has underestimated by ten and he who says thirty has overestimated by ten, and the estate should therefore be valued at 100? Because the majority declare it not worth more than 100 zuz, or one moah. The anonymous teachers maintain that the estate is worth $93\frac{1}{3}$ zuz, because the one who estimated its value at twenty selas (eighty zuz) underestimated by $13\frac{1}{3}$, and the one who said 100 zuz overestimated by $13\frac{1}{3}$, although he had intended to say $103\frac{1}{3}$ zuz, but thought he would not like to make his difference too large. And why not say that the one who said thirty selas (120 zuz) has overestimated by thirteen, and the estimate should be fixed at 113 zuz? The opinion of the majority that the estate is not worth over a moah is to be taken into consideration. Said R. Huna: The Halakha prevails with the anonymous teachers. Said R. Ashi: The reason of the anonymous teachers is not acceptable; should we decide according to them? There is a Boraitha that the judges of the exile are in accordance with the anonymous teachers, and R. Huna said again that so the Halakha prevails, but R. Ashi objected again for the same reason stated above.

MISHNA V.: If one says "I sell you the half of the field" (the half of the value is meant), the better one against the inferior is to be appraised, and the seller has a right to give the buyer the latter. The same is the case when he said "I sell you

the southern half of this field," and the buyer takes the half determined on by the seller. The seller, however, has to give space for a partition, and for a large and a small ditch. What is the breadth of a large ditch? Six spans. And of a small one? Three.

GEMARA: Said R. Hyya b. R. Abba in the name of R. Johanan: The buyer has to take the inferior. And he (when he heard this statement from R. Johanan) said to him: Does not the Mishna say "the better one against the inferior is to be appraised"? And should not this be explained to mean that each of them should take half of both good and inferior? And he answered: It seems to me that you have eaten too many dates in Babylon (so that you have no time to descend into the depths of the Mishna). Does not the Mishna contain the same expression, in the latter part,* concerning the sale of the south side of his field? And why the repetition? It should read "he should take a half at the south side," and we would understand it to mean half of the size. We must then say that it is repeated to teach that also in that case the half of the value is meant, as the same was in the first part.

"*The partition*," etc. There is a Boraitha: "The large ditch must be outside and the small one inside of the field, but both beyond the partition, so that beasts may not jump over the partition in the field." Why then the small ditch? Does not the large one suffice for this purpose? Because it is six spans wide, the beasts could enter in it and jump over. But does not the small ditch suffice? Because it is small, the beasts could stand on the edge of it and jump over. And how much shall the space be between the large and the small ditch? One span.

* The Mishna repeats the same language concerning the southern part which we, according to the sense, have translated "the same is the case."

CHAPTER VIII.

RULES AND REGULATIONS CONCERNING BEQUESTS TO AND INHERITANCE BY NEAR AND DISTANT RELATIVES, MALE AND FEMALE SLAVES AND THEIR DESCENDANTS, FIRST-BORN AND HUSBANDS. ONE MAY OR MAY NOT WISH TO BEQUEATH HIS ESTATE TO STRANGERS WHEN HE HAS CHILDREN. WHICH WILLS MUST BE CONSIDERED AND WHICH WILLS MUST NOT. THE DIVIDING OF AN INHERITANCE BETWEEN GROWN-UP AND MINOR CHILDREN, MALE AND FEMALE.

MISHNA I.: (Concerning inheritance, there is a difference between relatives.) There are those that bequeath at their death, and also inherit at the death of their relatives. There are those who inherit but do not bequeath, and also those who neither bequeath nor inherit. The father, his children, and also the brothers of the father may both bequeath and inherit to and from each other. The son from his mother, and the husband from his wife, and also the children of sisters inherit, but the former do not bequeath to the latter. The woman to her children, her husband, and her brothers bequeaths, but does not inherit from them. The brothers of the mother, however, neither bequeath to nor inherit from her.

GEMARA: Why does the Mishna mention the father his sons first? It does so, first, because the reverse order would imply a curse, and usually the beginning must not be with a curse (for when the son dies before his father it is certainly a curse), and, secondly, the Scripture [Numbers, xxvii. 8] reads, "If a man die and have no son," etc.; hence the death of the father is mentioned first. The Tana of the Mishna does thus because the law that a father shall inherit from his son is not written in the Scripture but is deduced (as will be explained farther on) and he desires to mention it first. Whence do they deduce it? From the following Boraitha: "(It is written) 'his kinsman means the father, from which it is deduced that if one dies and leaves brothers and a father, the father is the heir and not the brothers'; but lest one say that the father of the

deceased is preferred to his son, it is written 'that is next to him,' which means, whoever is nearest, and the son to his father is considered nearer than a father to his son. And what is the reason that you exclude the brother and include the son? Because the Scripture has substituted the son for the father in the case of a man servant [Ex. xxi. 9] and also in that concerning the possession of a field [Levit. xxv. 13], of which it is said elsewhere that only when the son has redeemed the field sanctified by his father, it may be returned in the jubilee year, but not if the father's brother or any other relative has done so. But why not say that the brother shall have the preference, as he inherits from his brother in case the latter dies childless [Deut. xxv. 5]? This cannot hold good, as the brother thus inherits only if there is no son; but if there is a son the brother does not inherit." Is it only for this reason, and if it were otherwise would the brother be the heir? May the son be substituted for his father in the two cases above stated, and the brother in the one case only? Nay, the same reason is given in the case of the above-mentioned possession of a field, wherein the son is preferred to the brother, also because the brother inherits only when there is no son. But why not say a kinsman means the father, from which we infer that he is preferred to his daughter? Lest one say that he is preferred to his son also, therefore it is written, "who is next to him," and a son is nearer to his father than the father to his son. As said above, this could be opposed thus: Let us see! If one dies and leaves a daughter, it is the same concerning Yebboom as if he should leave a son. Hence we see that a son and daughter are here equal before the law, and the same equality would obtain concerning inheritance. But why not infer from this that the father has the preference over *his* brother? And lest one say that he should have the preference over the brothers of the deceased also, it is written "the next," and brothers are considered nearer than the father to his son. It is not necessary that the father's brother be considered as excluded in the Scripture, as that would be contrary to common sense. What is the basis for the inheritance of the uncle of the deceased from his nephew, if not that his brother is the father of the deceased; and when the father is still alive, why should the brother be the heir?

But let us see. The passage in the Scripture does not corre-

spond with all that is taught above [Num. xxvii. 8], "If a man die and have no son, then shall ye cause the inheritance to pass unto his daughter, and if he have no daughter . . . unto his brothers . . . and if no brothers, unto his father's brothers, and if . . . no brothers, . . . to the kinsman." (Hence when the kinsman is mentioned at the end, how can you say that it means the father, who is the first in case the deceased left no son?) The passages are not written in order, as the kinsman, meaning the father, should be mentioned first, but the Scripture relies upon the words "who is next to him," and it is for the court to decide who is nearest to him. The following Tana, however, deduces it from the same passage in another manner, as we have learned in the following Boraitha: R. Ishmael said: "It is written, 'If a man die and have no son, then ye shall cause his inheritance to pass,' etc. Infer from this that you transfer the inheritance from the father only when the deceased left a daughter, but not when he left brothers." But why not say that the daughter transfers the inheritance from his brothers but not from his father? Because if it were so, the passage would read "and ye shall *give* the inheritance," and not "ye shall *cause to pass*," which means that if there is a daughter, her father may pass the inheritance to her, even when his own father is still alive. Now, what does kinsman mean in the opinion of R. Ishmael, who has deduced this from the words "ye shall cause to pass"? That which the following Boraitha states: "His kinsman means his wife. Deduce from this that the husband inherits from his wife." But to him who infers this from the word kinsman, what do the words "ye shall cause to pass" mean? That which we have learned in the following Boraitha: Rabbi said: In all the passages it is written "shall ye give," and only concerning the daughter "ye shall pass," to show that there is no one who shall pass an inheritance to another tribe except a daughter; so if she marries one of another tribe, her son or her husband may inherit from her.

But, after all, where is it you are assured that kinsman means the father? In Levit. xix. 12, "Thy father's kinswoman." Then why not say it means the mother, as the next verse reads "thy mother's kinswoman"? Said Rabha: It is written [xxvi. 11] "next to him of his family," and the family is named

only from the father's side as [ibid., 2] "after their families, by the descent from their fathers." But is not the name of the mother's side also employed? Is it not written [Judges, xvii. 7], "And there was a young man out of Bethlehem-Judah of the family of Judah, but he was a Levite, and sojourned there"? Now does not this passage contradict itself? It is written "of the family of Judah," from which it is to be inferred that they came from the tribe of Judah, and then it says he is a Levite, which means that he was of the tribe of Levi. We must conclude that his father was from Levi and his mother from Judah, and nevertheless this is called a family name. Said Rabha b. R. Hanan: The verse reads "and he is Levi," which does not mean that he was a Levite, but that his name was Levi. If so, how is to be understood (ibid., 17), "I have obtained a Levite for a priest"? There it is also written Levi, and means a man by the name of Levi. But how can you say that his name was Levi? Was not his name Jonathan, as it is written (ibid., xviii. 30), "And Jonathan the son of Gershom . . . were priests," etc.? And he answered: Even according to your theory, was he then the son of Menashe? He was the son of Moses, as it is written [I Chron. xxiii. 15]: "The sons of Moses were Gershom and Eliezer." It is written Menashe, because he acted like Menashe, who was an idolator; and therefore the phrase "of Judah" is employed because Menashe came from Judah. R. Johanan in the name of R. Simeon b. Jo'hai said: From this is to be inferred that we confer a corrupt name on a corrupt man. R. Jose b. Hanina, however, said that this may be inferred from the following [I Kings, i. 6]: "And his mother had after Abshalom." But was not Adoniyah the son of Chag-gith, and Abshalom the son of Maacha? We must say that because he acted like Abshalom, who also rebelled against the kingdom, the verse conjoined him with Abshalom.

R. Elazar said: We see that when Moses married the daughter of Jethro, Jonathan was the outcome, and when Aaron married the daughter of Aminadab the outcome was Pinchos.

But was not Pinchos also a descendant of Jethro, as it is written [Ex. vi. 25], "Elazar took of the daughters of Putiel for wife and she bore unto him Phinchas," and it is said elsewhere that Jethro and Putiel are identical? Nay, this Putiel is Joseph, as it is also said elsewhere that Joseph and Putiel are

identical.* But is it not said elsewhere that the tribes chided Phinchas, saying: "See the descendant of Puti, whose grandfather had fattened calves for idols; shall he dare to kill a prince of the tribe of Israel?" Both names are applicable; for if his mother's father was a descendant of Joseph, his mother's mother was a descendant of Jethro or *vice versa*, and the word Putiel instead of Puti may mean both.

Rabha said: If one is about to marry, it is advisable for him to investigate the character of the bride's brothers; as it is written (*ibid.*, 23), the "sister of Nachshon." To what purpose is it written the "sister of Nachshon"? Is it not evident that she was the sister of Aminadab? Hence this is an intimation to one about to marry to investigate the brothers of his prospective bride. There is also a Boraitha to the effect that the majority of children resemble the brothers of their mother. It is written [Judges, xviii. 3], "Who brought thee hither?" (*halom*) which means "Are you not a descendant of Moses?" of whom it is written [Ex. iii. 5] "hither" (*halom*), and "thou shalt be a priest to the idol"? And he answered: "I have a tradition from the house of my grandfather that it is better for one to hire himself to *Abhada Zarah* (idolatry) than to rely upon people that shall support him." [(Says the Gemara:) He has misunderstood it. *Abhada Zarah* means "idolatry." Literally, however, it is "a strange service" and it is as Rabh said to Kahana: (If you are in need), fleece a carcass in the middle of the market and do not say you are a great man, and it is not fit for you.)]

David saw that he was fond of money and appointed him treasurer for the government, as it is written [I Chron. xxvi. 24], "Shebuël the son of Gershon, the son of Moses, superintendent of the treasuries." Was then his name Shebuël? Was it not Jonathan? Said R. Johanan: Shebuël is composed of two words, *Shebu*, which means "repented," and *El* means "God"; and "Shebuël" means that he repented to God with all his heart.

* The Gemara infers it from terms in Hebrew or Chaldaic which it is impossible to translate into English; namely, Putiel, which is a name, *Pitem* meaning in Aramaic "fat," and *Pitpet*, which means in Aramaic "subduing." Hence by Putiel can be meant Jethro, who fattened calves for idols, and also Joseph, who subdued the evil spirits.

"*His children . . . inherit.*" Whence is this deduced? It is written [Numbers, xxvii. 8], "If a man die, and have no son," etc. We see the case is one wherein he has no son, but if he has one, that one has the preference. Said R. Papa to Abayi: But perhaps it means that if there is a son only, he shall inherit, and if there is a daughter only, she shall inherit; but if there were a son and a daughter neither of them should inherit. Said he: Who then shall inherit—the mayor of the city? I mean to say that neither of them shall inherit all, but each take an equal share. Said Abayi to him: Was it then necessary for the Scripture to state that if there were only one son he may inherit all the estates of his father? Answered he (R. Papa): I mean to say that the verse perhaps came to teach that a daughter may also be an inheritor. And he (Abayi) answered: This is already written [ibid., xxxvi. 8], "And every daughter that inheriteth," etc. R. A'ha b. Jacob said: This is to be deduced from the following [ibid., xxvii. 4], "Why should the name of our father be done away from the midst of his family because he hath no son?" But if he should have a son, the son would have the preference; but perhaps this was only the saying of the daughters of Zelophchod (*i.e.*, they thought that such was the law, as it was customary at that time). But after the Torah was given the law was changed, that a son and daughter should inherit together; therefore Abayi's explanation is better.

Rabhina said: This is to be deduced from the words "next to him," and a son is nearer than a daughter; and why? As it is said above, he may be substituted for his father in the cases concerning a maid-servant and a field, etc. But could then a daughter be substituted for her father in the case of a maid-servant? Hence the best interpretation is Abayi's; and if you wish, it may be deduced from Levit. xxv. 46, "For your sons after you," etc., which means to your sons* and not to your daughters. But according to this the verse [Deut. xi. 21], "The days of your children," which is also written with "*Buicchein*," should also be explained the sons and not the daughters? With a blessing it is different.

"*The brothers of the father.*" Whence is this deduced? Said Rabba: By analogy of expression "brothers" here [Num-

* It is written *buicchein*; literally, "sons." Leeser translates "children," according to the sense.

bers, xxvii. 9] and in Genesis, xlii. 32. "We are twelve brothers, the sons of our father"; as there they were brothers of the father, so are they here also on the father's side. But was it not said above that from the father's side the family is named, but not from the mother's? (See above, p. 244.) Yea, this is deduced from verse 11, as above, and Rabba's statement was taught concerning Yeboom (the marriage of a brother to the widow of his childless brother).

"*The son from his mother.*" Whence is this all deduced? From that which the rabbis taught. It is written [Num. xxxvi. 8], "Any daughter who inherits the estate of the tribes."* How can a daughter inherit from two tribes? It must be concluded that her father was from one tribe and her mother from another, and both died leaving estates, and she has inherited both. This is concerning a daughter, but whence have we knowledge concerning a son? From the *a fortiori* argument that as a daughter who has no share in the inheritance of her father when there is a son is nevertheless an heir to the estate of her mother, a son who inherits from his father so much the more inherits from his mother. And from this it is to be deduced that, as there the son has the preference over the daughter as an heir of the father, so is it also with the inheritance from the mother. Both R. Jose b. Jehudah and R. Elazar b. Jose, however, say in the name of Zecharia the son of the butcher that a son and a daughter are equally heirs of their mother. Why so? Because there is a rule: It is sufficient that the result derived from the inference be equivalent to the law from which it is drawn (and as the law that a son may inherit from his mother is drawn *a fortiori* from the case of the daughter, it is sufficient to say that he inherits also, but not that he shall have the preference). But does the first Tana ignore the theory of "it is sufficient"? Is this not biblical, as we have learned (First Gate, p. 51, in the beginning of the Gemara)? In all other cases he uses the theory; here, however, it is different, because of the reading "from the tribes." We see then that the tribe of the mother is equal to the tribe of the father, and as concerning the father's the son has the preference, so also is it concerning the mother's.

Nithai was about to act in accordance with Zecharia, and

* Leeser's translation does not correspond.

Samuel said to him: Ignore Zecharia, as the Halakha does not prevail with him. R. Tabla had acted in accordance with R. Zecharia, and R. Na'hman asked him what he had done. And the answer was that he had done so because R. Hinna b. Shlamiah said in the name of Rabh that the Halakha prevails with R. Zecharia the son of the butcher, and R. Na'hman told him, "Go and retract from your statement, and undo what you have done, and if you will not listen, I will put out R. Hinna from your ears" (I will place you under the ban). R. Huna b. Hyya was also about to act in accordance with R. Zecharia, and R. Na'hman said, "What are you doing?" And he answered: "I do so because R. Huna said in the name of Rabh that the Halakha prevails with R. Zecharia. Said R. Na'hman: "I will send immediately a message to R. Huna asking him if he said so." And Huna b. Hyya became ashamed. Said R. Na'hman to him: "If R. Huna were dead, you would rebel against me and act accordingly." But in accordance with whose was R. Na'hman's opinion? With both Rabh's and Samuel's decision that the Halakha does not prevail with R. Zecharia.

R. Janai leaned upon the shoulders of R. Simlai his servant, when he walked on the street, and it happened that R. Jehudah the second was coming in an opposite direction, and R. Simlai said to him: "The man who is coming in an opposite direction is a respectable one, and he is also nicely dressed." When they came together, R. Janai fumbled about R. Jehudah's dress* and said: "Is this what you call nicely dressed? It seems to me like a sack." Jehudah the second questioned him: "Whence is it deduced that a son has the preference over a daughter in the estate of their mother?" And he answered: "Because it is written 'tribes,' and the verse compares the tribe of the mother with the tribe of the father. As in the former case the son has the preference, so is it in the latter." Said Jehudah: "If so, why not say that as in the father's case the first-born takes a double share, so should it be in the mother's?" Said R. Janai to his servant: "Take me away from him, this man does not want to learn." And what was the reason? Said Abayi: It is written [Deut. xxi. 17], "of all that is found in his possession," not in her possession. But why not say that

* R. Janai was very infirm and could not see well.

this is so when a single man has married a widow who has children from the first husband, but if a single man has married a virgin, the first-born shall take a double share? Said R. Na'hman b. Itz'hak: The same verse cited reads, "for he is the beginning of *his* strength," *his* but not *her*. Is this verse not necessary to include a first-born who came after a miscarriage, that he is entitled to a double share, although he is not considered as such to be redeemed? Because it should be read, "he is the first of strength," and from the addition *his* both inferences are drawn. But still it may be said in case a widower married a virgin, but if a bachelor married a virgin then the first-born is entitled to a double share also from his mother. Therefore said Rabha: The verse ends "to him belongeth the right of first birth"; which means to him a *male*, but not to a *female*.

"*And the husband from his wife.*" Whence is this deduced? From that which the rabbis taught. It is written [Numbers, xxvii.], "his kinsman," and his wife is meant. Infer from this that the husband inherits from his wife; but lest one say that she inherits from him also, it is written [ibid.] "and he shall inherit from her." "*Outhoh*" means he inherits from her, but not she from him. But the verses are not written in that order, you say? Said Abayi: Read thus: "Then shall ye give his inheritance to his next kinsman and *he* shall inherit from her." Said Rabha to him: It seems to me that you have a keen knife to cut the verses. Therefore, said he, the verse means he shall give the inheritance from *his* kinsman to him; as he holds that the sages have a right to subtract, to add, and to interpret. (I.e., it is written *nachlossou*, literally "his inheritance," with a Vav at the end; *lishourou*, literally "to his kinsman," with a Lahmed at the beginning. Subtract the Lahmed from *lishourou* and the Vav from *nachlossou*. Put these two letters together and they will read *lou*, literally "to him," and then the verse will read thus: "Ye shall give the inheritance of his kinsman to him.) The following Tana, however, infers this from the same verse in another way, as we have learned in the following Boraitha: It is written, "And he shall inherit from her." Infer from this that the husband inherits from his wife. So said R. Aqiba. R. Ishmael, however, said: It is not necessary to cut the verses (he does not hold the theory of subtracting, adding,

etc.), as there are other verses [ibid., xxxvi. 8], "every daughter that inheriteth," which refers to the transferring of an estate from one tribe to another through the husband, who is of one tribe and has married a woman of another tribe. It is written [ibid. 7], "And the inheritance of the children of Israel shall not pass from tribe to tribe," and it is also written next, "and no inheritance shall pass from one tribe to another," and then it is written [Joshua, xxiv. 33], "And Elazar the son of Aaron died and they buried him in the hill of Pinchas his son." Where then had Pinchas a hill which Elazar did not possess? We must then conclude that Pinchas married a woman who owned a hill, she died and he inherited it. And it is also written [I Chronicles, ii. 22], "And Segub begat Jair, who had three and twenty cities in the land of Gilad." And wherefrom did Jair obtain that which his father, Segub, did not possess, if not by inheritance from his wife. But to what purpose did R. Ishmael cite all the above verses? Lest one might say that the first cited verse does not speak of transferring an estate through the husband, but through her son, and the husband does not inherit. Therefore is the other verse cited, "And the inheritance of the children of Israel shall not pass," etc. But lest one say that this verse is written to make the one who transgresses answerable under a positive and a negative commandment, but still through the son and not the husband, therefore is the third verse cited. But lest one say that this verse is also written for the purpose of making the transgressor answerable under two negative and one positive commandments, therefore is the fourth verse cited; and lest one say that Elazar's wife owned a hill and Pinchas inherited it from her, therefore is the fifth verse cited. And lest one say that the same was the case with Segub and Jair, then why two verses which contain the same case?

Said R. Papa to Abayi: But what does this support? It may be said that the husband does not inherit, and all the above cited verses state that it was through the son, and did both Jair and Pinchas buy the estate in question? And Abayi answered: You cannot say that Pinchas bought the estate, as if this had been so the property would have been returned to the seller in the jubilee year, and then the upright Elazar would have been buried in ground not his own. But perhaps the hill

in question was transferred to Pinchas from estates set apart for the priests [Numb. xviii. 14]. Said Abayi to him: If we were to agree with your theory, the estate would be still transferred from one tribe to another. Is it not explained above that verse 8 refers to a woman who has inherited from both father and mother, who were of two different tribes? Why, then, if she should marry one belonging to the tribe of her father, would the estate of her mother be transferred to another tribe? And R. Papa said: This is no objection, as the case may be different, and perhaps the estate of her mother was already transferred. Rejoined Abayi: Such a supposition cannot be taken into consideration; as one would not say that because a part had already been transferred, the other part should now be transferred. Furthermore, the transfer was according to the law, as when a woman has married one of another tribe, her brother being still alive, she then possessed no heritage, but received it after she was already married. Afterward her daughter, who has inherited her mother's estate, if she should marry even one belonging to her father's tribe, her son would inherit from her the estate which had belonged to another tribe.

Said R. Jiiman to R. Ashi: Even in accordance with Abayi, who holds that the husband does inherit, it is correct. If the verse is to be explained that the daughter has already inherited from her mother, who was of another tribe, the Scripture commands that she shall marry one of another tribe, to the end that the estate of one tribe shall not be transferred to another one, no matter whether through son or husband; but if the estate of her mother was not as yet transferred, why should she marry one of her father's tribe? The estate of her mother, which belongs to her, if her husband inherits from her, would be transferred to him; hence the estate of one tribe would be transferred to another. The answer was that she might marry a man whose father was of the tribe of her father, and his mother of the tribe of her mother, and in such a case the estate of her father remains within the tribe of her father, and the estate of her mother remains also with the man whose mother is of the same tribe. But if so, should not the verse read "to one who is of the family of her father's and mother's tribe"? If the verse should so read, one might say that even if her husband's father were of her mother's tribe, and his mother was of

her father's tribe, this would not be in accordance with the law, as the estate of her father would be transferred to her husband, who is of another tribe. There is a Boraitha that through the son the estate is transferred, namely: "The seventh verse reads 'the inheritance of the children of Israel shall not pass,' etc., which refers to the son. But perhaps it refers to the husband? This could not be, as verse 9 reads 'as no inheritance shall pass from one tribe to another,' which refers to the husband; hence verse 7 refers to the son." There is another Boraitha: "Verse 9 refers to the husband, but perhaps it refers to the son? This cannot be, as verse 7 has already referred to the son." We see, then, that both Boraithas hold that verse 9 refers to the husband. Where is this taken from? Simon in the name of Rabba b. R. Shila said: From the expression "*ish*" in verse 8, which means husband. But is not the same expression in verses 7 and 9? Said R. N'ahman b. Itz'hak: From the expression "*Idbako*" (adhere). But also this expression is in 7 and 9? Therefore said Rabba: From the end of verse 9, which reads "the tribes of Israel shall adhere"; and R. Ashi maintains, from the expression "from one tribe to another tribe," a son cannot be called of another tribe.

R. Abuhu in the name of R. Johanan, who spoke in the name of R. Janai, who heard it from Rabbi, quoting R. Joshua b. Kar'ha, said: Whence is it deduced that the husband does not inherit the estate to which his wife during her life is only heir apparent (*e.g.*, his wife is an only daughter and she dies before her father, leaving a child, and thereafter her father dies, and her child but not her husband inherits)? From [I Chronicles, ii. 22]: "Segub begat Jair, who had three and twenty cities." Whence did Jair obtain these, which his father did not possess. Infer from this that Segub had married a wife who had twenty-three cities, and she died while her nearest heirs yet lived. Thereafter her nearest heirs also died, and Jair, her son, not Segub, her husband, was her heir. And the same is the case with Elazar, who married a woman who possessed a hill, and she died while her nearest heirs were still alive, and thereafter the nearest heirs also died and Pinchas inherits from her. How are we assured that Elazar's wife brought him the hill; perhaps Pinchas' wife possessed it? By the words "his son," in Joshua, xxiv. 33 (which are superfluous, as every one

knows that Pinchas was his son), meaning his son who was the proper heir."

"And also the children of sisters." There is a Boraitha, "Sons but not daughters of sisters." How is this to be understood? Said R. Shesheth: It means that if there were sons and daughters, the sons would have the preference. As R. Samuel b. R. Itz'hak taught in the presence of R. Huna: It is written [Numb. xxvii. 11] "and he shall inherit it," which means that the second inheritance shall be equal to the first; as in the first the son has the preference, so it shall be with the second. Rabba b. Hanina taught in the presence of R. Na'hman: It is written [Deut. xxi. 16], "Then shall it be (in the day *) when he divideth an inheritance," which means in the daytime he may divide an inheritance but not in the night-time. Said Abayi to him: "Do you mean to say that only from him who dies in the daytime his children may inherit, but otherwise they cannot? Perhaps you mean to say that judges must not discuss a case of a will, at night, as we have learned in the following Boraitha: It is written [Numb. xxvii. 11] "a statute of justice," which means that the whole section which treats of inheritance is a statute of justice (which must be discussed in the daytime *only* and by no less than three judges). It is as R. Jehudah said elsewhere: If three persons visited a sick man and he made verbally his last will before them, they might, if they wished, write it down, and, further, they might execute it. If, however, there were only two, they might write down his will (as witnesses), but could not execute it. And to this R. Hisda added that so it is as to the daytime only, but if it were at night, even if there are three, they may write down the will, but not execute it; because they are considered witnesses only, and a witness cannot qualify as an executor. And Rabba answered him: Yea, this is what I meant to say.

It is taught: In the case of a gift with the ceremony of a sudarium by any person, whether healthy or sick, what time may be given him to retract? Rabba said: As long as they are sitting at that place where the ceremony was performed. And R. Joseph said: As long as they are discussing this matter. Said R. Joseph also: It seems to me that I am right in my decision, as R. Jehudah said that three who are visiting a sick person

* The Scripture reads *byoum*, "at the day," which Leeser has not translated.

may, if they like, write down his will and execute it; now, if you say he may retract as long as they are sitting there, though they do not discuss the matter, how can they execute the will but in the doubt that while they are doing so he may retract? Said R. Ashi: I have maintained before R. Kahana, even in accordance with R. Joseph's theory, that it is to be feared that even while they are discussing this matter he will retract; how then can they execute the will? Say, then, that they have ceased to discuss this matter and are discussing another one. The same can be said here, that they arose after hearing his will, and again took their seats. The Halakha, however, prevails in accordance with R. Joseph concerning the field mentioned above (p. 38), concerning this case, and concerning the case of "a half" (when the sick man says, "I bequeath my estate to you and your son," upon which, according to R. Joseph, the estate may be divided equally), which matter will be explained in Chapter IX.

"The woman to her children." To what purpose is this repeated? Does not the first part read "the son from his mother," etc.? It comes to teach us that the case of "the woman to her children" is equivalent to that of the woman to her husband. As the husband does not inherit in the place of his wife that which she would have inherited had she lived (as illustrated in the case of the woman who predeceases her father), so also the son inherits his mother's share, but his brothers (of the one father) do not inherit from him if he dies.* R. Johanan in the name of R. Jehudah b. R. Simeon said: Biblically a father inherits from his son, and a mother also inherits from her son, as it is written "tribes," from which is deduced the tribe of the mother as well as the tribe of the father; as concerning the tribe of the father, the father inherits from his son, the same is the case with the mother. R. Johanan, however, opposed R. Jehudah, from our Mishna, which states that a woman to her son, her husband, and the brothers of the mother may bequeath but not inherit. R. Jehudah answered: I am not aware who taught our Mishna; but let him say that our Mishna is in accordance with R. Zechariah, who does not care to explain the

* This is the explanation of Gershom. Rashbam, however, interprets it to mean that if the son dies while his mother is still alive, the legal heirs are not his brothers, but the relations of her father.

word "tribes" as a comparison. Our Mishna cannot be explained in accordance with R. Zechariah, as it states "and the children of sisters," and a Boraitha adds that the sons but not the daughters are meant, which was explained by R. Shesheth as meaning that the sons have the preference, and according to R. Zechariah, sons and daughters are equal heirs of their mother. But how is to be explained the teaching of the Tana of our Mishna? If he holds that the word "tribes" is to be taken as a comparison of one tribe to another, why should not a woman inherit from her son; and if he does not, whence does he derive his theory that a son has the preference in the estate of his mother? The comparison holds good, but this case is different; because it is written "every daughter that inheriteth," which means she may inherit but does not bequeath.

MISHNA II.: The order of inheritance is thus: If a man dies, leaving no son, the inheritance shall pass to his daughter (reads the passage), by which we see that the son has preference before the daughter, and the same is the case with all the descendants of the son, who also have preference before the daughter. The daughter has preference over the brothers of her father, and the same is the case with her descendants. The brothers of the deceased have preference over the father's brothers, and the same is the case with their descendants. This is the rule: After every one who has the preference concerning an inheritance, his descendants have, in order, a like preference. The father has the preference before all his descendants.

GEMARA: The rabbis taught: It is written "a son"—from which we know the son himself only, but whence do we deduce the son's son or his daughter, or even the grandson of his daughter? It is written *ien lou*; and we read the word *ien* as if it were written *ayin*, which means investigate, for perhaps his son left a son or a daughter, etc. It is also written "a daughter," by which we know indeed the daughter, but whence do we deduce her daughter, son, and daughter of her son? It is written *ien*, "*ayin*," as said above. And the same is the case with investigation in the opposite direction (*i.e.*, perhaps the father's father is yet alive), so that an investigation concerning inheritance may stretch back to Reuben, the son of Jacob. Why only back to Reuben, and not as far as Jacob? Said Abayi: We have a tradition that the whole tribe cannot be ex-

tinguished.* R. Huna in the name of Rabh said: If one decides that a daughter shall inherit, when there is a daughter of a son, even if he were a prince in Israel, he must not be listened to, as so acts the Sadducean, which we have learned in the following Boraitha: On the 24th day of the month Tebbeth we returned to our old law, namely: the Sadducean used to say that a daughter should inherit an equal share with the daughter of the son, and Rabban Johanan b. Zakai said to them: "Ye fools, wherefrom have ye taken this?" And none was there to answer him, except an old man who talked (childishly) against him thus: Is this not an *a fortiori* conclusion? The daughter of his son who comes upon the strength of her deceased father, the son of the bequeather inherits. So much the more the daughter who comes upon the strength of the bequeather himself should take a share in the inheritance. R. Johanan then read before him [Gen. xxxvi. 20], "These are the sons of Seir the Chorite, who inhabited the land, Lotan and Shobal and Zibon and Anah," and there is also written [ibid. 24]. "And these are the children of Zibon, both Ajah and Anah." How is it to be understood? Infer from this that Zibon had lain with his sister Ajah, and she bore Anah. [But perhaps there were two Anahs?] Said Rabba: I shall say a thing which would be fit for King Sabur to say [Samuel is meant, although, according to others, R. Papa said so when he meant Rabba]. It is written in the same verse cited "that Anah," which means one that is the same as the Anah of verse 20. Said the Sadducean to R. Johanan: Rabbi, with such an explanation do you think to override me? R. Johanan answered: And why not? Should not our Torah with its regulations ignore your gossip? Your *a fortiori* conclusion could be easily overthrown by the following theory: How can you compare one's daughter to the daughter of his son, when the latter has a right of inheritance even when the brothers of her father are still alive, while the former has no such right (for a daughter does not inherit when she has brothers)? And with this he conquered the Sadducean, and this day was established for a festival.

It is written [Judges, xxi. 17]: "And they said their inheritance must be secured for Benjamin, that not a tribe may

* *I.e.*, it cannot happen that all the descendants of one of the twelve tribes of the sons of Jacob should die. The basis of this is Malachi, iii. 6.

be blotted out from Israel.” Said R. Itz’hak of the school of R. Ami: Infer from this that at that time a stipulation was made that as long as the tribe of Benjamin should continue, the daughter of a son should not inherit her share with existing brothers, in order that, through her marriage to a man of another tribe, she might not divert the estate from the tribe of her father. R. Johanan in the name of R. Simeon b. Johai said: He who leaves no son to succeed him is unloved of heaven, as it is written [Psalms, lv. 20]: “Those who leave * no changes fear no God.” R. Johanan and R. Joshua b. Levi differ. According to one a son is meant, and according to the other a disciple. From the fact that R. Joshua b. Levi did not go to a funeral unless the deceased was childless, because it is written [Jeremiah, xxii. 10], “Weep sorely for him that goeth away,” which R. Jehudah in the name of Rabh interpreted as meaning “he who passeth away without a son,” it must be concluded that R. Joshua b. Levi was the one who said “a disciple.” R. Pinchas b. Hama lectured: It is written [I Kings, xi. 21]: “And when Hadad heard in Egypt that David slept with his father and that Joab the captain of the army was dead.” Why concerning David is it written “slept,” and concerning Joab “dead”? Because David left a son, and Joab did not. But is it not written [Ezra, viii. 9]: “From the children of Joab, Obhadia b. Jechiel”? Therefore, as “slept” is the word employed for David, we must conclude that he left a son like himself, which was not the case with Joab. Wherefore in his case the term “dead” is used. And he also said: Poverty in the house of one is harder than fifty plagues, as it is written [Job, xix. 21]: “Spare me, spare me, O ye my friends! for the hand of God hath touched me.” And he was answered [ibid. xxxvi. 21]: “Thou hast chosen this instead of poverty.” † The same said again: If one has a sick person in his house, he shall go to a wise man and request him to pray for the sick one, as it is written [Prov. xvi. 14]: “The fury of a king is like the messengers of death; but a wise man will appease it.”

“*This is the rule.*” Rami b. Hama questioned: If the deceased left a grandfather and a brother, as did Abraham and Jacob to the estate of Esau, who had the preference? Said

* Leeser translates “dread,” which does not correspond.

† Leeser does not correspond at all.

Rabha: Come and hear the decision of our Mishna, which states that the father has the preference before all his descendants. Rami, however, maintains that the father has the preference over his descendants, but not over the descendants of his son. (Says the Gemara:) It seems that Rami is right. As the Mishna states, this is the rule: He who has preference concerning inheritance, his descendants have the same. Now, if when Esau died Isaac and Abraham were both alive, Isaac would have had the preference to the estate; the same would have been the case if Isaac had been dead. Then Jacob would have had the preference over Abraham, because he was a descendant of Isaac. Infer from this that so it is.

MISHNA III.: The daughters of Z'lophchod have inherited three shares from the inheritance of their father, his share as one of the ascendants from Egypt, his share in the division of Chipher his father (who was also among the ascendants from Egypt), and because he was a first-born he inherited a double share.

GEMARA: Our Mishna is in accordance with him who said that the land was divided among the ascendants from Egypt, and not to their children (*i.e.*, the person who entered the land of Israel, if he was among the ascendants of Egypt, took his share, and divided it among his children; and if an ascendant had died and his children entered the land, the share of their deceased father was given to them and they divided it among themselves), as we have learned in the following Boraitha: R. Iashiah said: The land was divided to the ascendants of Egypt, as it is written [Numb. xxvi. 55], "According to the names of the tribes of their fathers." But how does this correspond with [ibid. 53], "unto these shall the land be divided," which means to those who entered the land? Those are meant who are of sufficient age (twenty years), excluding the minors. R. Jonathan, however, said that to those who *entered* the land it was apportioned, not to their fathers, as it is written in the verse just cited. But how would this correspond with verse 55? This inheritance is different from all other inheritances, as in all others the living inherit from the dead, and here the dead inherit from the living; and to illustrate this, said Rabbi, I shall give you a parable. It is similar to the case of two priests in one city, one of whom has one son, while the other has two;

and when they go to the barn to take the Taruma, he who has only one son takes one share (*e.g.*, a saah), and he who has two takes two shares, and they turn them over to their fathers, who divide the shares equally among themselves, according to the number of souls. Such, also, was the apportionment of the land of Israel. Each received land according to the number of his souls, and after that they divided it among themselves according to the number of the heads of the family who were of the ascendants from Egypt; hence the dead ascendants inherit from the living. R. Simeon b. Elazar, however, said that the land was apportioned to both, in the manner stated in both of the above-cited verses. How so? He who was of the ascendants from Egypt took his share among them, and he who was of those who entered the land of Israel took his share among them, and he who was of both the ascendants and the entering took his shares with both of them. The shares of the spies Joshuah and Caleb took and divided equally. Those who murmured and the congregation of Kora'h had no share in the land at all, and their children took their shares, as the direct heirs of their grandfathers on both the paternal and maternal sides. But whence do you know that in Num. xxvi. the ascendants from Egypt are meant? Perhaps it means the tribes themselves who entered the land? It is written [Ex. vi. 8]: "I will give it you for an heritage." Inheritance implies from parents to children, and this was said to the ascendants from Egypt.

Said R. Papa to Abayi: It is understood by him who says that the land was divided among the ascendants from Egypt [Num. xxvi. 54], "To the large tribe shalt thou give the more inheritance, and to the small shalt thou give the less inheritance," etc.; but to him who says "to those who entered the land," what does this verse mean? This objection remains.

R. Papa said again to the same: To him who said that the land was divided to the ascendants it is to be understood why the daughters of Z'lolphchod sued for their father's share; but according to him who says "to those who entered the land," for what did they sue? There was no share for them, as Z'lolphchod was dead and he had no share. They sued that the share of their deceased father might be given to their grandfather Chipher, and that they might take their shares in succession. (He said again:) It is comprehended by him who says "the

ascendants," etc., why the children of Joseph cried [Joshua, xvii. 14], "Why hast thou given me but one lot and one portion of inheritance?" But to him who says "to those who entered," why did they cry—each of them took his share? They cried concerning the minor children, which were numerous. Said Abayi: From all this is to be inferred that all who entered the land of Israel had a share; and if not, they protested. And lest one say that he whose protest had effect is written, and he whose protest had no effect is not written, then the protest of the children of Joseph was of no effect and nevertheless written down. This is beside the purpose of the verse, which is aimed to convey good advice to mankind; in effect, that one shall take care not to be afflicted by a covetous eye. And this is what Joshua said to the children of Joseph [ibid. 15], "If thou art a numerous people, then get thee up to the wood country," which means, "Go and hide thyself in the forest, that no covetous eye may afflict thee"; and they answered: We are the descendants of Joseph, whom a covetous eye cannot afflict. As it is written, etc. [see Middle Gate, p. 213].

The text says that the shares of the spies Joshua and Caleb inherited. Whence is this deduced? Said Ula: It is written [Numbers, xiv. 38]: "But Joshua the son of Nun and Caleb . . . remained alive." What is meant by "remained alive"? Shall we assume it is meant literally? To this there is another verse [ibid. xxvi. 65], "save Caleb and Joshua." We must then conclude that the first-cited verse means that they lived with their shares. Farther on they murmured, and the congregation of Kora'h had no share? But did not a Boraitha state that the shares of the spies, the murmurers, and the congregation of Kora'h, Joshua and Caleb inherited? This presents no difficulty. The Tana of our Boraitha compares the murmuring to the spies, while the other master does not, as we have learned in the following Boraitha: It is written [ibid. xxvii. 3], "Our father died in the wilderness." Z'lophchod is meant. "But he was not of the company" means "the spies"; "of those who gathered themselves" means "the murmurers in the company of Kora'h," literally. Hence one compares the murmurers to the spies, and one does not.

Said R. Papa to Abayi: And to him who does not so compare them, did then Joshua and Caleb inherit almost the whole

land of Israel (as the murmuring ones were very numerous)? And he answered: He means to say the murmurers who were among the company of Kora'h.*

"As a first-born he inherited a double share." But why? At the time when Z'lophchod died the land was not as yet prepared for apportionment (as it was still in the possession of the nations), and it is said above that a first-born does not inherit a double share in that which is not yet in existence. Said R. Jehudah in the name of Samuel: The Mishna was meant to say "in their personal property."

Rabba opposes R. Jehudah's statement that the daughters of Z'lophchod took four shares, as it is written [Joshua, xvii. 5], "Ten portions of Menasseh." Therefore said Rabba: The land of Israel was considered prepared for division, since the Lord himself promised to give it as an inheritance to Israel. An objection was raised from the following: R. Hidqua said: "I had a colleague, Simeon the Shqmuni, who was one of the disciples of R. Aqiba. He used to say thus: Moses our master was aware that the daughters of Z'lophchod were heiresses; but he did not know whether they were entitled to the share of the first-born, and the passage about the inheritance would be written through Moses, even if the case of the daughters of Z'lophchod had not happened, but they were favored by heaven that this passage should be written through them. The same was the case with the wood-gatherer. Moses our master was aware that for the crime he committed there is a capital punishment, but he did not know by which of them he should be executed; and the passage would have been written through Moses, even if the case of the wood-gatherer had not happened. But as he was guilty, it was written through him; and this is what is meant by the reward of virtue, while the chastisement for sin is dealt out through a sinner. (See Sabbath, 1st ed., p. 55.) Now, if it be borne in mind that the land of Israel was prepared for division, why was Moses doubtful? He was doubtful in the following: It is written [Ex. vi. 8]: "And I will give it you for an heritage." Does this mean "an heritage from the parents"? Hence a first-born has to take a double share; or does it mean, "I give it to you—you shall bequeath it to your children" (as the decree was, that the persons ascending from

* The text continues a discussion about the same matter, explaining the supposed contradiction of the passages, which is of no importance, and is therefore omitted.

Egypt were to die in the desert), and the decision was both that the land was a heritage from the parents and yet not for themselves, but to bequeath to their children? And this is what is written [ibid. xv. 17]: "Bring them, and plant them." It was not said "*us*," and this was a prophecy, wherein they themselves did not know they were prophesying.

It is written [Num. xxviii. 2]: "And they stood before Moses and before Elazar the priest, and before the princes and all the congregation." Is it possible that when Moses did not answer them they were going to complain before the princes? Therefore this verse must be reversed. So said R. Jashia. Abba Hanan in the name of R. Elazar said: All of them were in the college when they came to make their complaint. And the point of their differing is: Whether in presence of the master the disciple must be honored or not. According to one, he may; and therefore he maintains that before they came before Moses they asked the princes, and he who said that this verse must be reversed, maintains that all were of the opinion that in presence of the master the disciple must not be honored with any question. There is a Boraitha that the Halakha prevails that he may be honored. But another Boraitha states: He may not. And it presents no difficulty. In case the master himself honors the disciple, it may be done; and in case he does not, it may not.

There is a Boraitha that the daughters of Z'lophchod were wise, understood lecturing, and were also upright. They were wise, as their protest was to the point. As R. Samuel b. R. Itz'hak said: At the time when Moses our master was sitting and lecturing about the law of Yeboom [Deut. xxv. 57], "If brothers dwell together," they said to him: If we are considered as a son, then let us inherit; and if we are not considered at all, then let our uncle marry our mother. And therefore [Num. xxvii. 5]: "And Moses brought the cause before the Lord." They understood lecturing, as they said: If he should have a son, we would not say a word. But there is a Boraitha that they said: If there should be a daughter. How is this to be understood? Said R. Jeremiah: Ignore the Boraitha. Abayi, however, said: "It is not necessary to ignore it. As they said: If there should be a daughter from a son, we would not say a word. They were upright, in that they each only married him

who was respectable and fit for them. R. Eliezer b. Jacob taught: Even the youngest of them was not less than forty years of age when she married. Is that so? Did not R. Hisda say: If a woman marries at less than twenty years of age she bears children until sixty. After twenty she bears until forty; but when she marries after forty, she does not then bear children? Because they were upright, a miracle happened to them, as to Jochebed, the mother of Moses. As it is written [Ex. ii. 1]: "And there went a man of the house of Levi, and took a daughter of Levi." Is it possible that a woman of one hundred and thirty years of age should be named daughter? As R. Hama b. Hanina said: This meant Jochebed, whose mother was pregnant while on the road to Egypt, and she was born before the walls (when they arrived in Egypt). As it is written [Num. xxvi. 59]: "Jochebed the daughter of Levi, whom (her mother) bore to Levi in Egypt." And why is she named daughter? Said R. Jehudah b. Zebidah: Infer from this that signs of youth returned to her. The wrinkles disappeared, the complexion became improved, and her beauty returned to her. But why is it written "he took"? It ought to read, "he remarried." Said R. Jehudah b. Zebidah: Learn from this that he did with her as if he were marrying for the first time: he placed her under a canopy. Aaron and Miriam sang before her and the angels said: "The mother of the children shall rejoice."

Farther on the Scripture mentions the daughters of Z'lophchod according to their age, and here according to their wisdom.* And this is a support to R. Ami, who said: In the college the most scholarly has preference to age; at a banquet, however, age is considered. Said R. Ashi: Even in college, only *he* who excels in wisdom; and also concerning a banquet, only *he* who is of advanced age is considered (but if one has little wisdom and little more age than the others it does not matter).

In the school of R. Ishmael it was taught: All the daughters of Z'lophchod were equal in wisdom (and that they are mentioned in the Scripture differently means nothing).

R. Jehudah in the name of Samuel said: It was permitted to them to marry any one of any tribe, as it is written [Num. xxxvi. 6]: "To those who are pleasing in their eyes may they

* [Num. xxvii. 1:] Mahlah, Noah, Chaglah, Milcah, and Thirsah, while on the occasion of their marriage, Mahlah, Thirsah, Chaglah, Milcah, and Noah are written.

become wives." But what is to be said of that which is written farther on: "Only to the family of their tribe," etc.? This is to be considered as a good advice—that they should marry respectable men only who were fit for them, and not as a positive commandment.

Rabba objected: It is written [Lev. xxii. 3]: "Say unto them . . . in your generations." (How is this to be understood?) Say unto them, who were at the mountain of Sinai; and to "your generations" means that the same law shall apply to "all their generations." But why should it be mentioned, "the parents and their children"? Because there were some commandments for the parents only, and some applying to children only. And what are the commandments to parents only? The law [Num. xxxvi. 8]: "And every daughter that inheriteth any possession," etc. And what are the commandments to the children? Many, as *c.g.*, heave-offering, tithe, and all others imposed upon the land of Israel.

We see, then, that the cited verse 8 prohibited marriage to other tribes at that time only? Rabba himself answered his objection: The daughters of Z'lophchod were not included in the commandments to the parents.

The master says: "The commandments belong to the fathers, but not to the sons. But whence is this deduced? From [ibid., verse 6]: 'This is the thing,' which means, 'This thing shall be customary only in their generation.' So said Rabha." Said Rabha the minor (Zuti) to R. Ashi: According to this, should Lev. xvii. 3, in which the same expression is used, also be "for their generation" only? And he answered: There it is different, as verse 7 reads plainly: "A statute forever shall this be unto them throughout their generations."

There is a Mishna in Tract Taanith, p. 80: "Never were any more joyous festivals in Israel than the 15th of Ahab and the Day of Atonement," etc. Why is the 15th of Ahab a festival? Said R. Jehudah in the name of Samuel: In their days the tribes were allowed to intermarry.

(Here is repeated from Taanith, pp. 91, 92, q. v.)

The rabbis taught: There were seven men who encompassed the whole world since its creation until now: namely, Mesushelach has seen Adam the first, Shem has seen Mesushelach, Jacob has seen Shem, Amram has seen Jacob, Achiah the Shiloni has

seen Amram; Elijah the prophet has seen Achiah, and the latter (Elijah) is still alive. But how can you say Achiah had seen Amram? Is it not written [Num. xxvi. 65]: "There was not left of them one man save Caleb and Joshua"? Said R. Hamnuna: The tribe of Levi was excluded from the decree that all should die in the desert. As it is written [ibid., xiv. 29]: "In this wilderness shall your carcasses fall, and all that were numbered of you, according to your whole number from twenty years," etc., excluding the tribe of Levi, of which the number was from thirty years. But did not the same happen to other tribes? Is there not a Boraitha that Jair and Machir, the sons of Manasseh were born in the time of Jacob, and did not die until after the entering into the land of Israel? Said R. A'hab. Jacob: In that decree, they who were less than twenty, and more than sixty years old, were not included.*

The schoolmen propounded a question: How was the land of Israel divided? Was it divided into twelve parts for twelve tribes (and for each tribe as a whole), or was it divided severally? Come and hear! [Num. xxvi. 56]: "According as they are many or few" (hence it was divided among the tribes and not severally). And there is also a Boraitha: "In the future the land of Israel will be divided among thirteen tribes," while in the past it was divided only among twelve; and it was also divided by money (the explanation will be given farther on); and it was also divided only "by lot" and by the Urim v'tumim, as it is written [ibid., 56]: "by the decision of the lot." How so? Elazar was attired in the Urim v'tumim. Joshua and all Israel were standing by, and an urn containing the names of the tribes, and another, and the names of the boundaries of the land, were placed there; and Elazar, influenced by the Divine Spirit, would say thus: "Zebulon will now come out from the urn, and with him the boundary of Akhu." And then one of the tribe of Zebulon would put his hand into the urn and draw the name of his tribe, and then put his hand into another urn and draw Akhu. And then again Elazar, influenced by the Divine Spirit, would say: Now Naphtali will come, and with him the boundary Ginousar. And so it was with each tribe. However, the division in the world to come will not be equal to the division of

* In the text it is deduced by analogies of expression, and omitted as of no importance.

land in this world, as in this world, usually, the lot of one is a field of grain, and of another, one of fruits; but in the world to come, every one will have a share in the mountains, valleys, and plains. As it is written [Ezek. xlvi. 31]: "The gates of Reuben, one," etc., which means that every one will have equal land and shares, and the Holy One, blessed be He, Himself will assign the shares. As it is written [ibid., 29]: "And these are their allotted division, said the Lord Eternal." We see, then, that the Boraitha states that in the past the division was twelve parts to the twelve tribes. Hence it was divided among the tribes and not severally. Infer from this that so it is.

The master said: The land of Israel will be divided among thirteen tribes. Who will be the thirteenth? Said R. Hisda: The prince of Israel will be the thirteenth. As it is written [ibid., 19]: "And the laborer of the city (*i.e.*, the prince who bears the yoke of the whole city), whom men of all the tribes will serve." * Said R. Papa to Abayi: But why not say that to the prince would be given a city or the like, but not a thirteenth share of all the land? † And he answered: This could not be borne in mind. As it is written [ibid., 21]: "And the residue shall belong to the prince, on the one side and on the other of the holy oblation, and of the possession of the city," etc. (Hence we see that a share was given to him by all tribes.)

The text says farther on: "It was divided by money." What does it mean? Shall we assume that he who had good land would pay to him who had inferior? Does the Boraitha treat of fools, who take money instead of good land? Therefore it must be said that money was paid by those who had shares near to Jerusalem to those who took their shares far from Jerusalem (nearness to Jerusalem being preferable, as it was nearer to the Temple and farther from the land of the natives, therefore in less danger than if near to them). And on this point the following Tanaim differ. R. Eliezer said that they were rewarded with money, and R. Joshua maintains that this reward was in land, as, *e.g.*, compared with where a saah can be sown nearer to Jerusalem they took five saahs.

* Leese's translation does not correspond.

† The text has "Rungur." The Aruch explains this as two words of the Persian language: "Run" means "day," and "gur" means "hirer"; and accordingly Rashbam construes "day-hirer," which does not fit very well. We have therefore translated in accordance with R. Gershom.

It says farther on: "It was divided only by lots." There is a Boraitha, "except Joshua and Caleb." What does it mean? That they did not take any land at all? Is it possible? It is said above that they took the shares of the spies, etc. Hence they took what did not belong to them. So much the more what did belong to them. It means they did not take by lots, but by the decree of heaven. As it is written [Joshua, xix. 50]: "By the order of the Lord did they give him the city which he had asked—Timnath Serah on the mountain of Ephraim." And Caleb—as it is written [Judges, i. 20]: "And they gave Hebron unto Caleb as Moses had spoken." But was not Hebron one of the cities of refuge? It means the suburbs and villages around the city.

MISHNA IV.: A son and daughter are equal concerning inheritance. However, a son takes two shares of the estate of his father, but not of the estate of his mother; and the daughters are fed from the estate of their father, but not from that of their mother.

GEMARA: What does the Mishna mean by its statement that they are equal concerning inheritance? Shall we say that they inherit together? Is it not said above that the son and all his descendants have preference over the daughter? Said R. Na'hman b. Itz'hak: It means to say that they are equal concerning an estate which is not yet fit for division. But have we not learned also this: That the daughters of Z'lophchod took three shares from the estate of their father, and when Z'lophchod died the land was not yet fit for division? And, secondly, what does the expression "however" mean? Said R. Papa: It means to say that they are equal in taking the share of a first-born. It means that when a first-born died childless they took his share. But this also was already stated concerning Z'lophchod; because he was a first-born, a double share belonged to him, which his daughters inherited, and in reference to him also we do not know what the expression "however" means. Therefore said R. Ashi: It means to say that the son and daughter are equal; in case one has bequeathed to him or to her all his estate, his will must be executed. Is this in accordance with R. Johanan b. Beroka? This is said farther on by him: If one has bequeathed to them who are legal heirs, his words must be listened to? And even if one should say that our Mishna is in

accordance with R. Johanan, and the succeeding Mishna is in accordance with them who differ with R. Johanan, is it not a rule that in such a case the Halakha does not prevail with the anonymous Mishna? And still, what means the word "however"? Therefore said Mar b. R. Ashi: It means that the son and daughter are equal in all cases concerning inheritance, be it the estate of father or mother. However, there is a difference between them, that the son takes two shares from the estate of the father, but does not from the estate of his mother."

The rabbis taught: It is written [Deut. xxi. 17]: "To give him a double portion," which means a double portion as against one brother. But perhaps it means a double portion from all the estate, and should be discussed thus: His share, when he has five brothers, should be equal to that when he has only one. As in the latter case he takes two shares from the whole estate, so it should be with the former. On the other hand, it can be discussed thus: His portion, when he has five brothers, should be equal to that when he has only one brother, in this respect, that as in the latter case he takes twice as much as his brother, so it should be in the former case, that he takes twice as much as all of them. Therefore it is written [ibid., 16] "Among his sons, what he hath." We see, then, that the Torah treats of the inheritance as among all one's sons; hence we have to take the second supposition, and not the first. It is also written [I Chron. v. 1]: "And the sons of Reuben, the first-born of Israel, for he was the first-born; but when he defiled his father's bed, his birthright was given unto the sons of Joseph the son of Israel, so that the genealogy is not to be reckoned after the first birth." And it is also written [ibid., 11]: "For Judah became the mightiest of his brothers, and the prince descended from him; while the first birthright belonged to Joseph."

Now the case of the first-born is mentioned concerning Joseph, and also concerning generations; as in the case of Joseph, it was only twice as much as each of the brothers. As it is written [Gen. xlviii. 22]: "Moreover, I have given unto thee one portion above thy brothers." So also is it with the case mentioned as to generations, that the first-born should have only one portion more than his brothers. It is written farther on: "Which I took out of the hand of the Emorite with my sword and with my bow." Did he indeed take it with sword

and bow? Is it not written [Ps. xlv. 7]: "For not in my bow will I trust, and my sword shall not help me." ? Therefore we must explain that "with his sword" he means prayer, and "with my bow" supplication.

To what purpose was it necessary to cite all the verses? Lest one say that the cited verse in the above Boraita is needed for R. Johanan's above theory; therefore the other cited verse, etc.

Said R. Papa to Abayi: How is it inferred from the last cited verse that Jacob gave Joseph twice as much as to all his brothers? Perhaps he presented to him only a like estate? And he answered: To thy question the Scripture says [Gen. xlviii. 5]: "Ephraim and Manasseh shall be unto me as Reuben and Simeon. (Hence we see that he had twice as much as his brothers, who each were counted as one tribe, and he for two.)

R. Helbo questioned R. Samuel b. Na'hmeni: What is the reason that Jacob took away the privilege of the first-born from Reuben and gave it to Joseph? You ask for the reason. Does not the Scripture state the reason: "When he defiled his father's bed"? I mean to say: Why did he give it to Joseph? And he rejoined: I will tell you a parable to which this case is similar: There was one who had raised an orphan in his house. At a later period the orphan became rich, and thought, I will recompense my benefactor (because Joseph supported his father in the years of famine, therefore he recompensed him). Said R. Helbo to him: And how would it be if Reuben had not sinned: then Jacob would have given nothing to Joseph? Thereto I shall tell you what R. Jonathan your master said concerning this: The first-born had to come from Rachel. As it is written [ibid., 37]: "These are the generations of Jacob. Joseph." But Leah was preferred by virtue of her prayers. Because of the very chastity of Rachel, the Holy One, blessed be He, returned it to her. And what were Rachel's virtues? As it is written [ibid., 12]: "And Jacob told Rachel that he was her father's brother, and that he was Rebekah's son." The brother of her father? Was he not the son of her father's sister? It was thus: He asked her whether she would marry him, and she said, Yea, but my father is very shrewd, and you cannot persuade him. And to the question: What does it mean? she answered: I have a sister who is older than myself, and my father will not give me

to you while she is not married. Then he said: I am his brother in shrewdness. She then asked him: Is it, then, allowed to the upright to be shrewd? And he answered: Yea; as it is written [II Sam. xxii. 27]: "With the pure thou wilt show thyself pure, and with the perverse thou wilt wage a contest." And then he furnished her with some signs, that when she should be brought to him he would ask her for these signs, that he might be sure that she was not exchanged for Leah. Thereafter, when Leah was brought to him instead of Rachel, the latter thought, Now Leah will be ashamed, and confided to her the signs. And this is what is written [Gen. xxix. 25]: "And it came to pass that in the morning, behold, it was Leah," from which it is to be inferred that until the morning he did not know that she was Leah, because of the signs which Leah received from Rachel.

Abba Halipha Qruyah questioned R. Hyya b. Abba: Of Jacob's children who came to Egypt in sum you find seventy; however, if you will number them in detail, you will find only sixty-nine. And he answered: There was a twin with Dinah. As it is written [ibid., xlv. 15]: "With Dinah his daughter." According to your theory there was a twin with Benjamin also, as the same expression was used? He said then: A valuable pearl was in my hand, and you were about to abstract it. So said R. Hama b. Haninah: This was Jochebed, whose mother was pregnant, and bore her before the walls (above, p. 263).

R. Helbo questioned again R. Samuel b. Na'hmeni: It is written [Gen. xxx. 25]: "And it came to pass, when Rachel had borne Joseph," etc. Why when Joseph was born? And he answered: Because Jacob our father saw that the descendants of Esau would become submissive to the descendants of Joseph only. As it is written [Obadiah, i. 18]: "And the house of Jacob shall be a fire, and the house of Joseph a flame, and the house of Esau a stubble." Helbo objected to him from [I Sam. xxx. 17]: "And David smote them from the twilight even unto the evening of next day," etc. Hence we see that they were submissive also to David, who was a descendant of Judah, and not of Joseph. Answered Samuel: The one who made you read the prophets did not do so with the Hagiographa, in which it is written [I Chron. xii. 21] * "And as he was going over to

* In the Hebrew Bible it is verse 21; in Leeser's, verse 20, because he put together verses 5 and 6.

Ziklag . . . captains of the thousands that belonged to Manasseh.” Hence they were submissive to the descendants of Joseph. R. Joseph objected from [ibid., iv. 42 and 43]: “And some of them, even of the sons of Simeon, five hundred men, went to mount Seir, having at their head Pelatyah and Nearyah and Rephayah, and Uzziel, the sons of Yishi. And they smote the rest of the Amalekites that were escaped, and dwelt there unto this day.” Said Rabba b. Shila: Yishi was a descendant of Manasseh. As it is written [ibid., v. 24]: And these were the heads of their family divisions: namely, Ephraim and Yishi.”

The rabbis taught: “The first-born takes a double share in the shoulders, in two cheeks and the maw, in the consecrated things, and also in the improvement of the estate which was improved after the father’s death. How so? If the father left them a cow which was hired to others, or she was pasturing on the meadow and she brought forth offspring, the first-born takes a double share. If, however, the heirs build houses or plant orchards, the first-born does not take a double share.”

Let us see how was the case with the shoulders, etc. If already in the father’s hand, it is self-evident; and if not when still alive, then it was not yet in existence; and there is a rule that a first-born does not take a double share in that which is fit, but not yet in existence? The Boraitha treats of a case where the priest has acquaintance among people who usually give such a gift to him only, and the cattle were slaughtered while the father was still alive. And the Tana of the Boraitha holds that the above gifts are considered separated immediately after slaughtering, although they were not as yet taken off. It states farther on: If the father left them a cow, etc. Let us see: It teaches that the first-born takes a double share, even when it was under the control of others. Is it not self-evident that so much the more does the rule apply when it was pasturing on the meadow under proper control? It comes to teach us that the case “hired out to others” should be equal to pasturing in the meadow in this respect, that the heirs not needing to feed it, the improvement came of itself; but not when the heirs fed it, as then the improvement would be considered as made by the heirs, of which no double share is given. And this Boraitha is in accordance with Rabbi of the following Boraitha: A first-born

does not take a double share in the improvement of an estate which was improved after the father's death. Rabbi, however, said: I say that he takes, provided the improvements came by themselves, but not if improved by the heirs.

When they inherited a promissory note, the first-born took a double share; and if there was left a promissory note from the father, the first-born had to pay a double share. If, however, he says, "I will not pay double and also not take a double share," he may do so. What is the reason of the rabbis? It is written [Deut. xxi. 17]: "To give him a double portion." We see that the Scripture considers this a gift; and a gift is not considered unless it comes to one's hand. The reason of Rabbi is, because it is written "a double portion." We see, then, that the Scripture equals this to an ordinary share; and as concerning an ordinary share it is considered belonging to the heir even before it reaches his hand, the same is the case with the double share.

Said R. Papa: In case the father left a small tree, and pending the time of inheritance it became large; or unmanured earth, which has improved by itself, all agree that a double share is given. In what they differ is, in a case where the father dies when the seeds are as yet growing, and at the time of dividing the inheritance had been made into sheaves; or date-trees were as yet blooming, and at the time of dividing bore dates. According to one, it is to be considered an improvement by itself; and according to the other, it is considered changed to another article, of which a double share is not to be given.

Rabba b. Hana in the name of R. Hyya said: If one has acted in accordance with the decision of Rabbi, the act is valid; and the same is when he has acted in accordance with the decision of the sages. And the reason is because R. Hyya was doubtful whether the Halakha prevails with Rabbi when he differs with an individual, or it is so even when he differs with a majority (as in this case a majority differs with him). Hence it cannot be considered a wrong act if one has acted according to one of the decisions. Said R. Na'hman in the name of Rabh: It is prohibited to act in accordance with Rabbi [as he holds that the Halakha prevails with Rabbi against an individual only]. R. Na'hman, however, himself maintains that it is permitted to act in accordance with Rabbi [as he holds that the Halakha pre-

vails with Rabbi even against a majority]. Said Rabha: It is prohibited to act in accordance with Rabbi to start with; however, if one did so, his act is valid [and his reason is, that in such a case where Rabbi differs with the majority, the college has to teach in accordance with the majority to start with, but it cannot compel the one who acted in accordance with Rabbi to ignore his act].

It was taught: R. Na'hman taught in the Mechilta and Siphre, it is written [Deut. xxi. 17]: "Of all that is found in his possession," means to exclude the improvement which was made by the heirs after the father's death, but not that which improved by itself. And this is in accordance with Rabbi. Rami b. Hama, however, taught in the above-mentioned books that it excludes that which improved by itself, and so much the more that which was improved by the heirs. And this is in accordance with the sages.

R. Jehudah said in the name of Samuel: A first-born does not take a double share in a loan. According to whom is it? It cannot be in accordance with the rabbis, as they exclude him even from an improvement which is under the heirs' control; so much less of a thing which is not under their control. It must then be said that this is in accordance with Rabbi. But then the Boraitha which states: "If they inherit a promissory note, the first-born takes a double share in the loan, as well as in the interest," will not be in accordance with both the rabbis and Rabbi. It may be that Samuel's statement is in accordance with the sages; and nevertheless he has to teach this, lest one say, because he holds the promissory note in his hand, it is to be considered as already collected, he comes to teach us that it is not so.

"A message was sent from Palestine, that he takes a double share in the loan, but not in the interest." According to whom is this? It cannot be in accordance with the rabbis, for the reason stated above; and also not in accordance with Rabbi, who states in a Boraitha that he takes a double share in the loan, as well as in the interest? It is in accordance with the sages; but the Palestinians hold that a note is considered as already collected.

Said R. A'ha b. Rabb to Rabbina: Amimar happened to be in our city, and lectured: "A first-born takes a double share

in a loan, but not in the interest thereof. And Rabhina answered: The Nahardeans are in accordance with their theory elsewhere (both Amimar and R. Na'hman were from Nahardea), as in such a case Rabba said that if the heirs recovered real estate on a loan of their father a double share is given, but not if they collected money. R. Na'hman, however, holds the reverse: A double share is given if money is collected, but not on real estate. Said Abayi to Rabba: There is a difficulty concerning your decision, and also concerning the decision of R. Na'hman. Concerning your decision, the reason of which is to be supposed that their father left to them not *this* money now collected, as he left a promissory note only; but why should it not be the same with the estate? Did, then, their father leave real estate to them? Moreover, you, master, said that the reason given by the Palestinians concerning the case of a certain old woman (stated farther on) seems to you a right one, and this certainly contradicts your present decision. And concerning R. Na'hman's there is also the same difficulty, as his reason must be that there is no double share from the collected estate, because they did not inherit it from their father. Why should it not be the same with money, as the collected money was not of the inheritance of their father. Moreover, did not R. Na'hman say in the name of Rabba b. Abuhu, that if orphans have recovered real estate for a debt to their father, and there was a creditor to whom their father was indebted, the creditor might take away the estate which they recovered? (Hence he (R. Na'hman) considers the recovered estate as if left by the deceased—why, then, should there not be given a double share?) Answered Rabba: There is no difficulty concerning my statement, nor concerning R. Na'hman's, as we both have pointed out only the reason of the Palestinians by which, according to my theory, a double share is given from real estate, but not for money; and to R. Na'hman's it is the reverse. But our own opinion is, that neither from real estate nor from money is a double share given.

What was the case of the old woman, mentioned above? There was one who wrote in his will: "My estate shall be given to my old grandmother, but after her death it shall belong to *my* heirs." The deceased had a married daughter, who died while her husband and the deceased grandmother were still

alive; and her husband, after the death of the old woman, demanded the estate of his father-in-law, which was in the hand of his grandmother. And R. Huna's decision was: His claim is right, as the will states, "After her, my heirs shall inherit it," which is to be explained, "My heirs, and the heirs of my heirs." R. Anan's decision, however, was: His claim is not to be considered, as the will states, "to *my* heirs," and he was not his heir, but the heir of his daughter. And the Palestinians sent a message: The Halakha prevails with R. Anan, but not for his reason, as, according to his reason, even should his daughter leave a son, he would also not inherit; and this is not so, as the reason why the husband could not inherit is, that the law that the husband inherits from his wife holds good only when she left real estate, but not such an estate as was not as yet in her hands, but to come, which is not the case with a son, who inherits this also.

But shall we assume that R. Huna holds that one may inherit even an estate which was not as yet in the hands of his wife? Said R. Elazar: This case was discussed by great men, and the final decision, with its reason, will be rendered by a small man like my humble self. Every one who says "after thee" is to be considered as if he were to say "from to-day" (*i.e.*, the above will states "after her," which means the estate shall belong to "my heirs from to-day, but they are not to use the products so long as the old woman is alive"). Rabba, however, said: It seems to me that the reason given by the Palestinians is good as, according to that will, if the old woman should sell the estate, the sale would be valid.

R. Papa said: The Halakha prevails that a husband does not inherit a property which was to come in the future to his wife, and the same is the case with a first-born. He—the first-born—also does not take a double share in a recovered loan, in real estate or money; and, furthermore, if the first-born owes money to his father, the share which belongs to a first-born is to be divided, half to himself and the other half to his brothers. (The reason is, according to Rashbam, because this share is considered doubtful money, as it is not certain that the first-born is to be considered an occupant with respect to it, the supposition being that he has mortgaged all his estate for this debt to his father for the purpose that, in case of his father's death, he should take a double share. And there is a rule that doubtful

money is to be divided. And according to Gershom, the reason is because this loan is not to be compared with the loan of a stranger, as he who is an heir is also an occupant with respect to this debt, and this gives him title to a half of the share in question.)

Said R. Huna in the name of R. Assi: If the first-born protests when his brothers come to improve the estate left by their father, saying: "They shall delay improvement until after division," this protest must be considered in case they have not listened to him, and he takes a double share in the improvement also. Said Rabba: The decision given by R. Assi seems to me right in case, *e.g.*, they inherited vines, and the improvement was by gathering the grapes from the vines; or they inherited olives, and took them off from the trees: but if they made wine or oil thereof, the protest is not to be considered. R. Joseph, however, maintains: Also in the latter case, it is to be considered. Why? They inherited grapes, and now it is wine! As R. Uqba b. Hama said elsewhere: It means he shall receive a double share of the value of the grapes. The same is the case here. *I.e.*, if it happened that the vine was of less value than the grapes, he might claim his double share in the grapes, as he has protested that wine be not made of them. And where did Uqba say this? In reference to the statement of R. Jehudah in the name of Samuel, that if a first-born and his brother have inherited vines or olives, and gathered them, the first-born takes a double share of them, even when they were pressed. Pressed! Were they not first grapes, and now wine? Mar Uqba b. Hama explained that it means that the first-born receives his full double share of the value of the grapes, as explained above.

R. Assi said: If, at the dividing, the first-born took an equal share with his other brother, it is to be considered that he has relinquished his right. R. Papa in the name of Rabha said: He has relinquished his right in the divided estate only. R. Papi in the name of Rabha, however, said: It is to be considered that he has relinquished his right on all the estates. The reason of the former is because he holds that the first-born has nothing until the estate is divided. Therefore he can relinquish his right only in the divided ones. And the latter holds that as soon as the father dies the double share belongs to the first-born, even before division. And therefore, as he has relinquished his right

in the divided estate, so has he done with all others. Both statements, however, were not said by Rabha plainly, but were inferred from the following act: There was a first-born who sold all the estate belonging to him and his brother. The orphans of his brother were going to eat dates of the estate belonging to their father, which was in the possession of the buyers, who struck them. Their relatives said to the buyers: It is not enough for you that you have bought their estate without the consent of the father and the orphans, you dare to strike them. And the case came before Rabha, who decided that the act of the first-born was null and void. R. Papi explained that it means he did nothing with the share belonging to the ordinary brother, but concerning his own share, the sale was valid; and R. Papa explained the decision of Rabha, that the whole sale was null and void, because the first-born had nothing in the estate before it was divided.

A message was sent from Palestine: If a first-born sold out before division, he did nothing. Hence they hold that the first-born had nothing before the division. The Halakha, however, prevails that he has. Mar Zutra of Drishba had divided a basket of pepper with his brothers, and took an equal share, though he was a first-born; and when the case came before R. Ashi, he decided that as he relinquished his right concerning the pepper, it was also relinquished on all other property.

MISHNA V.: If one said in his will, "My son so and so, who is a first-born, shall not take a double share," or, "My son so and so shall not inherit at all with his brothers," he said nothing, as this provision is against the law in the Scripture. If, however, he has divided all his goods in his verbal will, and to some of his heirs he has bequeathed more and to some less, also equalizing the first-born, his will is valid, provided he has not mentioned in his will the word "inheritance." But if he said "because of inheritance," it is not to be considered. If there was a written will in which, in the beginning, middle, or end, was mentioned "a gift," all that it contains is to be listened to.

GEMARA: Shall we assume that our Mishna is not in accordance with R. Jehudah, who said in Tract Kedushin that a condition against the law in the Scripture, if in money matters, may be listened to? This Mishna can be even in accordance with him, as in that case the woman was aware of the law, but

relinquished her right. In our case, however, no one has relinquished.

R. Joseph said: "If one said in his will, 'My son so and so is *my* first-born,' he takes a double share. If, however, he said, 'My son so and so is a first-born,' he does not, as perhaps it was meant he was a first-born to his mother." There was one who came before Rabba b. b. Hana as a witness that he was certain so and so was a first-born. And to the question: Whence do you know it? he answered: Because his father called him "the first-born fool." And he said: This is no evidence, as people used to name a first-born to his mother first-born fool (*i.e.*, a first-born without right).

It happened that another came before R. Hanina as a witness for a first-born, and to the question: Whence do you know it? he answered: His father used to say, "Go to Sh'kh'at my son, who is a first-born, whose spittle cures eyes." But perhaps he meant a first-born to his mother? There is a tradition that a first-born of the father cures, and a first-born to his mother does not.

R. Ami said: If born *ατμητος*, and after perforation found to be a male, he does not take a double share, as it is written [Deut. xxi. 15], "first-born son," which means a son when born. R. Na'hman b. Itz'hak said that also the law of *ibid.*, *ibid.* 18 does not apply to him. Amimar said: Such is not considered an heir at all, so that his share is not to be reckoned, and does not diminish the double share for the first-born. R. Shezby said: He must also not be circumcised on the eighth day. And R. Shrabyah said: The law [Lev. xii. 2] does also not apply to such (as in all the cited verses it reads a son or a male child). Said Rabha: There is a Boraitha in accordance with R. Ami: It is written a son, but not *ατμητος*; a first-born, but not a doubtful one. What does the latter part mean to exclude? That which Rabha lectured: If two wives of one have born two sons in a secret place which was dark, and it is not known who was born first, they may write a power of attorney each to the other (*i.e.*, if I am the first-born, I authorize you to take the double share for me; and if you are, then take it for yourself. And then one of them collects the double share and divides it with the other. Said R. Papa to Rabha: But did not Rabbin send a message: I have questioned all my masters about the law

in this case, and could get no answer from any of them; but it was said in the name of R. Janai that if they were recognized, and afterward they were mixed up again, then the stated power of attorney is to be written, but not otherwise. Then Rabha took an interpreter and announced in college: That which I said in my first lecture was an error, as in the name of R. Janai was said thus: That if they were already recognized and afterward mixed, then the above-mentioned power of attorney should be given to each by the other, etc.

The inhabitants of a village situated in a meadow sent the following question to Samuel: Master, teach us where it was certain to the people that so and so, from the children of so and so, was a first-born. Their father, however, said that another was the first-born. How is the law? And his answer was: They should write the above-mentioned power, one to the other.

According to whom was Samuel's decision? If he holds in accordance with R. Jehudah, let him say so; and if in accordance with the rabbis, let him say so? He was in doubt according to whom the Halakha prevails. And wherein is their differing? The following Boraitha: It is written [ibid., ibid. 17]: "Shall he acknowledge," which means, he shall introduce him to others (which is superfluous, this being already written in the previous verse). From this said R. Jehudah: One is to be trusted if he testifies, "This is my first-born son." And as he is trusted concerning a first-born, so is he also to be trusted to testify, "This is a son of a divorced woman," and of lost priesthood. The sages, however, say that he is not trusted. Said R. Na'hman b. Itz'hak to Rablia: According to R. Jehudah's theory, the above-cited verse is right; but according to the rabbis, to what purpose is it written? That in case of a doubt the father's acknowledgment is needed (but in a case of certainty to the people that one was a first-born, the father is not trusted in denying it). But to what does such a law apply? If concerning a double share, even if he was not a first-born, has the father not a right to bequeath him a double share in the manner of a gift? It means, in case the father acquired estates after acknowledgment (*i.e.*, if he is to be trusted, the acknowledged first-born takes a double share; and if not, he does not). But according to R. Meier, who said that one may grant a thing

not yet in existence, to what purpose is the above verse written? If property came to him while he was struggling with death.

The rabbis taught: If one was known to the people as a first-born, and his father said of another, that he was the first-born, he is to be trusted; and if one was known to the people as not a first-born, his father, however, testifying that he is, he is not to be trusted. The first part is in accordance with R. Jehudah, and the latter with the rabbis. R. Johanan said: If he has testified, "He is my son," and thereafter said, "He is my bondsman," he is not to be trusted. If, however, he testified, "He is my bondsman," and thereafter, "He is my son," he is to be trusted; as the first testimony is to be considered as if he should say, "He serves me like a bondsman." The reverse is the case when at the house of taxes. If he said before the officers, "He is my son," and afterwards, "my bondsman," he is to be trusted, as the first statement was to avoid the payment of taxes for his slave; but if he said before the officers, "He is my bondsman," and thereafter, "my son," he is not to be trusted. An objection was raised from the following: If he has served him like a son, and he acknowledged him as such, and thereafter he said, "he is my bondsman," he is not to be trusted; and the same is the case if he has served him like a bondsman, and was acknowledged by him as such, and thereafter he said, "He is my son": he is not to be trusted. (Hence this contradicts R. Johanan.) Said R. Na'hman b. Itz'hak: The Boraitha treats of when he was called "the slave who costs me a hundred zuz," and such a thing a father would not say of his son.

R. Abba sent a message to R. Joseph b. Hama: If one says, "You have stolen my slave," and the defendant says, "I have not," and to the question, "What, then, is he doing with you?" the defendant answers, "They sold him to me," or "gave him to me as a present; and if you wish, take an oath that it was not so, and then you can take him." And if the plaintiff did so (although, according to the law, the plaintiff had no right to take him with an oath, and for the defendant no other evidence or oath is necessary, if he would not say so), the defendant has no right to retract from his previous words.

What news came he to teach us? This we have already learned in a Mishna (Sanh. III., 2)? He comes to teach that

the differing of R. Meier and the sages is in a case equal to our case, and the Halakha prevails in accordance with the sages.

The same R. Abba sent a message to the same R. Joseph: The Halakha prevails that a creditor may collect from bondsmen belonging to orphans for their father's debt. R. Na'hman, however, said: He must not.

The former sent another message to the same: The Halakha prevails that to a second-cousin a third-cousin may be a witness (according to the law, relatives must not be witnesses, and Abba comes to teach that a third to a second-cousin, which means a great-grandson to a grandson, is not considered a relative in this respect). Rabba, however, said: The third-cousin is competent as a witness even to the first-cousin. Mar. b. R. Ashi had accepted a grandfather as a witness: the Halakha, however, does not prevail with him. The same sent another message to the same: If one can witness about an estate, and he became blind, he is no longer competent as a witness in the case. Samuel, however, maintains that he is, as it is still possible for him to mark the boundaries; but concerning a garment, he is not. R. Shesheth, however, maintains that even in case of a garment he is still competent, as he may mark the width and the length of the garment; but not in a piece of metal. R. Papa, however, maintains that even in such a case he is still competent, as he may be aware of the weight.

An objection was raised: If one were cognizant of a case before he became a son-in-law to one of the parties, and the case came before the court after he became a son-in-law; or he was cognizant of the case when he was still in good health, and afterward became dumb, blind, or insane, he is not competent as a witness. But if he was cognizant of the case before becoming a son-in-law, and thereafter married a daughter, but she died before the case came before the court; or he was in good health when he became cognizant of the case, and also when it came before the court, but in the time between he became dumb, blind, etc., and cured, he is fit to be a witness. This is the rule: If in the beginning or the end of the case he was not competent, his testimony is not to be considered; but if he was competent both at the beginning and the end, but not in the time between, his testimony holds good. This opposes

the statements of all the Amoraim as above, and the objection remains.

R. Abba sent another message to R. Joseph b. Hama: If one say, "Of one child among the others," he is to be trusted. R. Johanan, however, says: He is not. What does this mean? Said Abayi: If one says, "This child shall inherit all my estates," he is to be listened to in accordance with R. Johanan b. Beroka. R. Johanan, however, says: He is not to be listened to, in accordance with the rabbis. Rabha, however, opposed: Does the message say he shall or shall not "inherit"? It says "trusted." Therefore he explained it thus: "If one testifies to one child among his children that *he* is the first-born, he is to be trusted, in accordance with R. Jehudah. R. Johanan, however, says: He is not to be trusted, in accordance with the rabbis. The same sent another message to the same. If one said in his will, "My wife shall take an equal share in my estates with one of my sons," he is to be listened to. Said Rabha: It holds good only concerning the estate in possession when the will was made, but not concerning the estate bought thereafter, and also that she takes an equal share with one of his children at the time of dividing (*i.e.*, if his children increased in number after the will was made, she takes her share accordingly, but not according to the number of children at the time the will was made). The same sent another message to the same: If one holds in his hands a promissory note, saying, "Nothing was paid," but the borrower say, "The half is paid," and witnesses testify that the whole amount is paid, the borrower has to take an oath that he paid the half, and then the lender may collect the other half from unencumbered, but not from encumbered estate, as the people by whom the estate is encumbered may claim, "We rely upon the witnesses that the whole amount is paid." And even according to R. Aqiba (Middle Gate, p. 5), the borrower may be considered as one who returns a lost thing—that is, if there are no witnesses; but if there are, R. Aqiba also admits that a half must be paid, as it is to be supposed that the borrower has admitted the half when he has seen that there are witnesses, and he did not know whether they were for or against him, and therefore he admitted a half. Mar. b. R. Ashi opposed: Even in accordance with R. Simeon b. Elazar, who said that the admission is to be considered, as an admission in part, to which an oath is

given biblically, it is only when there are no witnesses who support him; but not in this case, where witnesses support him: he is certainly considered as if he returned a lost thing. Mar Zutra in the name of R. Simeon b. Ashi lectured: The Halakha prevails in accordance with all messages that were sent by R. Abba to R. Joseph b. Hama. Said Rabhina to R. Ashi: But does not R. Na'hman oppose one of the above messages (and there is a rule that the Halakha prevails with R. Na'hman concerning money matters)? And he answered: We read the above message: It must not be collected; and so also said R. Na'hman. If so, what does Mar Zutra mean to exclude by his statement that the Halakha prevails with all the messages? It cannot mean Rabha's above statement, as he does not oppose, but explain; and also not Mar b. R. Ashi's, who said that a grandfather is competent as a witness. It is already said there that the Halakha does not prevail with him. And should we say that it means to exclude Samuel's, R. Shesheth's, and R. Papa's concerning witnesses who were not competent at the time the cases came before the court, they also were already objected? Therefore, we must say he came to exclude R. Johanan's statement, and the opposition of Mar b. R. Ashi as above.

"If it was mentioned in the beginning," etc. How is this to be illustrated? When R. Dimi came from Palestine, he said in the name of R. Johanan: "There shall be given such and such a field to so and so, who shall inherit it"—this is considered as if "gift" were written in the beginning. "So and so shall inherit such and such a field, and it shall be given to him"—this is a gift in the end. "He shall inherit, and it shall be given to him to inherit"—this is considered "gift" in the middle. This, however, is if there were one man and one field—*i.e.*, "Such and such a field shall be given to A, and he shall inherit"; but if it was written, "The field on the east side shall be given to A, and he shall also inherit such on the west side," that concerning which inheritance is mentioned is not to be considered, as it is against the biblical law. The same is the case where there was one field and two persons, as, *e.g.*, "A shall inherit a half of such and such, and the other half be given to B." R. Elazar, however, maintains: The law holds good even in the latter cases, but not when there are two fields and two persons. When Rabbin came from Palestine,

he said: "If one wrote, "The field on the east side shall be given to A, and B shall inherit that on the west side"—according to R. Johanan, title is acquired, and according to R. Elazar it is not. Said Abayi to him: Your saying is right concerning R. Elazar, as he said above that when there are two fields and two persons the will is not to be considered; but it contradicts R. Johanan's above statement. And he answered: R. Dimi and I differ in the statement which was made in the name of R. Johanan. Resh Lakish, however, maintains that title is not acquired unless it is stated plainly, "A and B shall inherit such and such fields which I have presented to them as a gift." Then they should inherit (*i.e.*, as this will speaks about two persons, "gift" must be mentioned twice, so that it should constitute a gift for each of them). However, in this case the Amoraim still differ. R. Hammuna maintains that the will in question holds good only as to one person and one field, but not as to one person and two fields, or *vice versa*. R. Na'hman, however, said that it holds good even as to one person and two fields, or *vice versa*; but not as to two persons and two fields; and R. Shesheth maintains that it holds good even in the latter case.

Come and hear an objection from the following: "My estates shall belong to you, and after you so and so shall inherit, and after him so and so shall inherit. If the first heir dies, title is given to the second; if the second dies, title is given to the third; but if the second dies while the first is still alive, the estate must be turned over to the heirs of the first one." Now, is not the case in that Boraitha equal to two fields and two men, and nevertheless it states that title is given? And lest one say that the Boraitha also treats of a case in which the persons mentioned are all direct heirs of the testator, and it is in accordance with R. Johanan b. Beroka's statement said above, then how is to be understood the latter part: "If the second dies, title is given to the third"? Did not R. A'ha b. R. Ivia send a message that in accordance with R. Johanan b. Beroka, if one says, "My estates shall belong to you, and after you to so and so," if the first was a direct heir, the second has nothing in the estate, as the expression is not to be considered as a "gift," but as an "inheritance"? And there is no interruption concerning an inheritance (*i.e.*, an inheritance cannot be halved so that a half of the inheritance shall belong to the direct heir and the other

half to the second, and also cannot be interrupted by the death of the regular heir, but is to be inherited by his heirs). Hence the Boraitha is an objection to the statements of all the Amoraim mentioned above, and so it remains.

Shall we then assume that it also objects to Resh Lakish's statement (*i.e.*, that the Halakha does not prevail with him)? How can this be imagined? Did not Rabha say that the Halakha prevails with Resh Lakish in certain three things, one of which being his statement made above? This presents no difficulty. The Boraitha cited speaks of when it was said in one speech (*i.e.*, there was no interruption between the words, "My estate shall belong to you, and after you," etc. It is therefore to be supposed that at the time he gave title to the first he also gave it to the second; and therefore all of them acquire title). But Resh Lakish treats of when it was said *with interruption* (*i.e.*, the statement of Resh Lakish that if there were two men and two fields title is not given, means that he said first, "This field shall be given to them," and after deliberating he said again, "shall inherit such a field," etc. Then the word "given" cannot be considered, in case of this other, and therefore title is not given). The Halakha prevails that all that is said in one speech is valid, except as to idolatry (*i.e.*, if one said this shall be for the idol, and without any interruption he said for something else, the thing in question is prohibited: because of the rigor as to idolatry, the first word which was spoken is considered). And the same is the case concerning betrothing—the first word is considered and the following is not, although it was in one speech.

MISHNA VI.: If one says: "A (who is a stranger to him) shall inherit my estate," and he has a daughter, or, "my daughter shall inherit," though he has a son, he said nothing, as the provision is against the biblical law. R. Johanan b. Beroka, however, maintains that if he has bequeathed to such persons as are fit to be his heirs, his will must be listened to; but if the persons are not fit to be his heirs, it is not to be considered.

GEMARA: From the expression of the Mishna, to a stranger instead of his daughter, or to the daughter instead of a son, it is understood if it was one daughter among others, or one son among others, he may be listened to. How, then, as to the latter part? R. Johanan b. Beroka said: If the persons

were fit to be his heirs, etc. Is this not the same as what the first Tana said? And lest one say that R. Johanan holds that even in the former case his will is valid, this cannot be, as the following Boraitha states: R. Ishmael the son of R. Johanan said: My father and the sages do not differ as to when one has bequeathed to a stranger instead of his daughter, or to his daughter instead of his son—he is not to be listened to; and wherein they do differ is, if he had bequeathed to one son or to one daughter among others, where according to my father his will is valid, and according to the sages it is not. (Hence there is a difficulty in understanding the expression of the Mishna?) If you wish, it may be said that because R. Ishmael found it necessary to say that they do not differ, there must be one who said that they do; and this was the first Tana. And if you wish, it may be said that the whole Mishna is in accordance with R. Johanan b. Beroka. But it is not complete, and should read thus: If one said: “A shall inherit my estate instead of my daughter,” or “My daughter instead of my son,” he said nothing. If, however, “My daughter so and so shall inherit my estate instead of my other daughters,” or “my son instead of my other sons,” he may be listened to; as R. Johanan b. Beroka declares that if he has bequeathed all his estate to him who is one of his direct heirs, his will is valid.

Said R. Jehudah in the name of Samuel: The Halakha prevails with R. Johanan. And so also said Rabha. And he added: What is the reason of R. Johanan b. Beroka? [Deut. xxi. 16]: “Then shall it be, when he divideth as inheritance among his sons what he hath,” means that the Torah gave permission to the father to bequeath his estate to whichever of his sons he pleased. Said Abayi to him: This may be inferred from “that he shall not institute the son of the beloved as the first-born before,” etc. We see that this is said only about the first-born, but not about the other sons. Nay, the latter is needed in addition to what we have learned in the following Boraitha: Aba Hanan in the name of R. Eliezer said: To what purpose is it written, “that he shall not institute,” etc.? Because from the beginning of the verse it is deduced that permission is given to a father to bequeath his estate to whom he pleases. And one may discuss thus: An ordinary son has the privilege to take his share in the estate which is not yet fit for division as if it

were already fit, and nevertheless his father has the permission to ignore him; a first-born, who has no such privilege, so much the more he could be ignored. Therefore it is written, "He shall not institute," etc. But let the Scripture read, "he shall not institute," *only*. Why the first half of the verse? Because one may discuss thus: a first-born, who has not the privilege to take his double share from that which is not yet fit, has nevertheless the privilege that he cannot be ignored by his father. An ordinary son, who has the privilege, so much the more he should not be ignored. Therefore the beginning of the verse, from which we infer that the father is permitted to bequeath his estates to whom he pleases, was necessary.

Said R. Zrika in the name of R. Ami, quoting R. Hanina, who said so in the name of Rabbi: The Halakha prevails in accordance with R. Johanan b. Beroka: Said R. Abba to him: He did not say so, but he decided so in a case (which came before him.) And what is the difference? One holds preference is to be given to a statement (*i.e.*, if he states that so the Halakha prevails, it is a teaching forever; but if he was only acting so, it may be said that it was only according to the circumstances and we cannot take it for a rule forever). And the other holds that the preference may be given to an act.

The rabbis taught: A Halakha must not be taken for granted from a discussion or from an act, as one has no right to act unless he is told to do so. If he questioned his master and he told him such and such a Halakha is to be practised, then he may go and act so, provided he does not compare one case to another. But do we not compare one thing to the other in the laws of the Torah? Said R. Ashi: It means to say that he must not compare one thing to the other in the law of dietary (*i.e.*, an animal which is fit for eating biblically, if it has such a sickness that it cannot live twelve months, it must not be used). In Tract Chulin the diseases are enumerated, but such diseases as are not enumerated there are discussed whether in connection with lawful use or otherwise. And it is said that in such cases no comparison is to be taken in consideration unless known by tradition. As we have learned in a Boraitha, one must not say, concerning *Trepheth* (sickness which makes the animal illegal): This is similar to this. And one should not be surprised, as, if one cuts a piece of the animal from one side, it

may remain alive; and from another side, and it dies immediately.

R. Assi questioned R. Johanan: "If you, master, declare a Halakha to us, saying that such is the law, may we practise accordingly? And he answered: You shall not practise unless I tell you that such is for practice. Said Rabha to R. Papa and to R. Huna b. R. Joshua: If it should happen that my written resolution in a judgment should come to your hands, and you should see some objection concerning it, you shall not tear it before seeing me; for if I should have some reason to approve it I will tell you, and if not I will retract from it. But if the same should happen after my death, you shall not tear it, and at the same time you shall not take it for an example for other cases. You shall not tear it, because, if I were alive, probably I would approve it by a good reason; and shall not take it for an example, as a judge has to act only according to his conviction and to that which he sees with his own eyes.

Rabha questioned: How is it when one bequeaths his estates to one son among others, while he is still in good health? Shall we assume that R. Johanan b. Beroka's statement is concerning a sick person only, to whom the above-cited passage may apply, but not concerning one who is in good health (when it is not usual for one to divide his estate), or it does not matter, and one may bequeath his estate when he pleases? Said R. Mesharshia to him: Come and hear the following: R. Nathan said to Rabbi: You have taught the following Mishna: If one has not written in the marriage contract, "Male children borne of you by me shall inherit the amount mentioned in your marriage contract in addition to their share among their other brothers," he is nevertheless responsible in this respect, as this stipulation is made by the Beth Din (court). And Rabbi answered him: It is to be read in that Mishna, instead of "inherits," they shall "take" (which means a gift, and to this all agree that the father has a right). Thereafter, however, Rabbi said: My youth made me presume to contradict Nathan the Babylonian, as I see now—from the law that male children cannot collect their mother's marriage contract from encumbered estate—that Nathan, who declared the expression of the Mishna to be "inherited" was right, as if the expression were as I declared, why, then, should they not collect from encumbered estates also?

(Hence we see that one even in good health has the right to bequeath, etc., as the Mishna treats of one entering into marriage.) And who is the one who holds that one may give the preference to one of his sons among others, if not R. Johanan b. Beroka? Hence there is no difference if he does it while sick or in good health. Infer from this that so it is.

Said R. Papa to Abayi: Let us see. According to both, no matter if the expression in the Mishna is "inherit" or "take," why should this hold good? Is there not a rule that one cannot grant to some one a thing which is not as yet in his hands? And even according to R. Meir, maintains that one *may* do so, it is when the thing is in existence, but not as yet in his hands. Here, however, concerning the marriage contract the male children are not at all in existence, and in such a case even R. Meir admits that one cannot. And if the answer to this question should be: When the court made a stipulation, it is different. Say then that only in a case where the stipulation of Beth Din holds, one can write so, even when he is in good health, but not otherwise? And Abayi answered: After all, it may be inferred that the Halakha prevails in accordance with R. Johanan b. Beroka, from the expression "inherit," as it could state "take" to which there is no opposition; and the choosing of the expression "inherit" shows that it agrees with R. Johanan. Thereafter, however, said Abayi: "What I said above is incorrect, as there is another Mishna: If one has not written in the marriage contract, 'The female children whom you will bear by me shall remain in my house after my death, and shall be fed from my estates until they shall marry,' he is nevertheless responsible, as this is a stipulation of the Beth Din." Now we see that the two statements which ought to be written in the marriage contract are in one case because of inheritance and in the other because of a gift; and in such a case even the opponents of R. Johanan admit that it is lawful. Said R. Nihumi, according to others R. Hananiah b. Minumi, to Abayi: But how do you know that one Beth Din has enacted both the stipulations mentioned above? Perhaps they were enacted by two different Beth Dins?

R. Jehudah in the name of Samuel said: If one bequeath all his estates to his wife, it is to be considered that he makes her a guardian only. It is also certain that if he did so to his elder

son, he is considered a guardian only. But how is it if he has bequeathed all his estates to his younger son? It was taught: R. H'nilai b. Aidi in the name of Samuel said that the same is the case even when his younger son was in his cradle.

It is certain that if one allot in his will an estate to a son and a stranger, the son is considered a guardian and the stranger acquires title to that which is bequeathed to him as a gift. The same is the case if to his wife and a stranger. It is also certain that when he had bequeathed his estates to his bride who was betrothed (and yet not married), or to his divorced wife, that it is a gift and they acquire title. The schoolmen, however, were doubtful when he did so to his daughter if there were sons, or to his wife if he left brothers; and also to his wife, who had no children, but stepsons. Shall we assume that he appointed any one of them as guardian only, for the purpose that she should be respected by the heirs as long as she lived, or he made them a gift and they acquire title to the estate. Said Rabhina in the name of Rabha: The women mentioned above do not acquire title, as they are considered guardians; except the bride and also his childless wife if she is together with her stepsons. and therefore acquire title). R. Avira, however, said in the name of the same authority that all the above-mentioned women acquire title except his childless wife, if he left brothers; and also his childless wife if she is together with her stepsons.

(All that is said above treats of a will by a sick man?) Rabha questioned: How is it if this was done by one while in good health? Shall we assume that the above verse applies only to a sick man, whose last will must be respected, or the same is the case with one in good health, as for this purpose he so acted that his words should be respected from that day? Come and hear: If one writes the products of his estates to his wife, and thereafter he dies, she may collect her marriage contract from the estate itself. If he writes her a part of the estate—a half, a third, or a quarter—she may collect her marriage contract from the remainder. If, however, he had presented to her all his estates, and thereafter a creditor came holding a promissory note from the deceased, according to R. Eliezer the deed of gift shall be annulled and she shall remain by her marriage contract. The sages, however, maintain, on the contrary: The marriage contract shall be annulled and she shall remain by the

deed of gift (as it may be supposed that she has relinquished her right in the marriage contract because of the gift she has received). Should, however, evidence be brought that the gift was not lawful, she remains shorn on both sides of the head. R. Jehudah the baker told that such a case happened with his sister's daughter, who was a bride; and the case came before the sages, and they decided that her marriage contract should be annulled and she should remain by her deed of gift. And thereafter the latter, for some reason, was also annulled, and she remained shorn on both sides of the head. We see, then, that if it were not for the creditor with his note, title would be given to her. Now, how was the case? Shall we assume that it was by a will from a sick man? Is it not said above that she is considered a guardian only? We must then say that it was by one in good health. Hence Rabha's question can be decided affirmatively. Nay, it may treat of a will by a sick man; and, according to R. Avira, it can apply to all the women mentioned above, and according to Rabhina's explanation it may apply to a bride and a divorced wife. Said R. Joseph b. Minumi in the name of R. Na'hman: The Halakha prevails that the marriage contract shall be annulled as the sages declare. Shall we assume that R. Na'hman does not hold the theory of supposition? Have we not learned in the following: If one's son went to the sea countries, and was thereafter reported dead, and he in consequence bequeathed all his estates to some one else, the gift is valid, even if his son were alive and returned. R. Simeon b. Menasia, however, maintains that the gift is null and void, as if he were aware that his son was still alive he would not do so; and R. Na'hman said that the Halakha prevails with the latter. (Hence we see that R. Na'hman holds the theory of supposition.) Yea, his decision that the marriage contract should be annulled is also because of a supposition—that for the pleasure she has in announcing that her husband presented to her all his estates she has relinquished the right to her marriage contract.

There is a Mishna (Peah, III., 10): "If one has bequeathed all his estates to his sons, but has left to his wife a small portion of ground, she loses her marriage contract." How is this to be understood—because he gave her a parcel of ground, she lost her marriage contract? Said Rabh: It means when he made the ceremony of a *sudarium*, to give title to his sons with

her garment (*i.e.*, as she has given her garment for the purpose of dividing all his estate among his sons, it is to be supposed that she agreed to this act without any objection concerning her marriage contract). Samuel, however, maintains that it is sufficient if he did so in her presence and she kept silent (as if this were against her will she would protest). R. Jose b. Hanina, however, maintains: It speaks of when he said to her, "Take this ground instead of your marriage contract." And the Boraitha teaches that concerning a marriage contract it is more loosely constructed than for other creditors, as the latter do not lose their right unless they say plainly, "We relinquish our right," while concerning a marriage contract it is sufficient that she does not protest. There is an objection from a Mishna in Khethuboth: R. Jose said: "If she has accepted, although he wrote nothing, she has lost the right of her marriage contract." From which it is to be inferred that according to the first Tana the accepting is not sufficient unless he writes. Hence he requires both writing and accepting. And lest one say that all of the Mishna in question is in accordance with R. Jose (*i.e.*, if he wrote her a small parcel of ground, she loses her right). And R. Jose adds that the same is the case if she accepted, although it was not written. This cannot hold good, as there is a Boraitha in addition to that Mishna: Said R. Jehudah: All this holds good when she was present and had accepted; but if she accepted and was not present, she lost nothing of her right in the marriage contract. Hence this Mishna is an objection to all the Amoraim mentioned above, and the objection remains.

Said Rabha to R. Na'hman: In the case in question we have heard the opinions of Rabh, Samuel, and R. Jose. Now I would like to know what is the opinion of you, master. And he answered: I am of the opinion that as soon as he made his wife a sharer with his sons (*i.e.*, at the time when he bequeathed his estates to his sons and set aside a piece of ground for her), she lost her marriage contract. (Provided she had not protested, as R. Na'hman holds with Samuel that if she kept silent it was sufficient.—Rashbam.) And so also it was taught by R. Joseph b. Minumi, in the name of R. Na'hman. Rabha questioned: How is it in a similar case when one is in good health? Shall we say only when he was sick, and she was aware that he had no other estates, therefore she relinquished? But when he was

still in good health she might think, "Why should I relinquish my right—he may in the future buy some other estates?" Or, on the other hand, having seen that he divided all his estates, she renounced her hope and relinquished? This question remains undecided.

There was one who wrote in his will, a half of my estate to one daughter, and the other half to another, and a third of the products to my wife. At that time R. Na'hman happened to be in Sura (where this will was made), and R. Hisda questioned him: How should such a case be decided? And he answered: Thus said Samuel: Even if he left to her the products of one tree only, she lost her right in the marriage contract. Said R. Hisda to him: Samuel's decision was when he gave her title to that which is attached to the ground; but in our case he left for her only fruit which was already gathered. And he rejoined: Then you speak of movable property. In such a case she certainly lost nothing. There was another man who said in his will: A third to one daughter, a third to another, and a third to my wife. It happened that one of the daughters died while her father was still alive (*i.e.*, as a father inherits from his daughter the deceased's share reverted to him, and this is similar, as he might buy some other estate after the division of his previous one), and R. Papa was about to decide that his wife had only the third bequeathed to her, but nothing in the third left from her daughter, for the reason that as soon as he has made her a sharer with his daughters the marriage contract was considered null. Said R. Kahana to him: Why should this case be different from the case that after making his will he bought other estate? Would she not have a right to it because of her marriage contract, as she has relinquished her right only for the sake of her daughters, when there was no other estate, but not in the estate he bought afterwards? The same is the case here: the inheritance of his daughter is to be considered as other estate bought.

There was another who divided all his estate but one tree among his wife and children, and Rabhina was about to say that the widow had a right to this tree only, if the amount of her marriage contract exceeded the value of the estate she received. Said R. Yimar to him: If she relinquished her right at the time the division took place, then she has no right even to this tree; and, on the other hand, if she has a right to this

tree, which means that she did not relinquish her right, then, by the same right by which she collects the excess from this tree, she may do so from the others which are in possession of the heirs.

R. Huna said: From all said above, it is to be inferred that in the case of a sick person who has bequeathed all his estate to a stranger, it is to be investigated if the latter is in some way fit to be called a direct heir. Then he takes it as an inheritance; and if not, he takes it as a gift. Said R. Na'hman to him: Why quibble? Say plainly the Halakha prevails in accordance with R. Johanan b. Beroka, as your decision is in accordance with him. However, perhaps you refer to a case which happened while one was dying and was questioned: To whom do you bequeath your estate—probably to so and so? and he answered: To whom else? And hence your statement that if the legatee is in some way fit to be an heir he takes it as an inheritance; and if not, he takes it as a gift? And he (Huna) answered: Yea, that is what I meant. But what is the difference whether he takes it as an inheritance or a gift? R. Ada b. Ahbha in the presence of Rabha said: If because of inheritance, then the widow of the deceased must be fed from the estate until she gets the amount belonging to her according to her marriage contract, which is not the case when he takes it as a gift. Said Rabha to him: Shall such a case make the position of the widow worse? In the case of an inheritance biblically, it is said that the widow must be fed from the estate; in the case of a gift, which is only a rabbinical enactment (as in reality one cannot present anything after death, but the sages enacted that the will of a sick person shall be considered as written and presented), shall she not have her right of support? Therefore Rabha explained: R. Huna's above statement agrees with the message which was sent by R. Aha b. Ivia: In accordance with the decision of R. Johanan b. Beroka (above, p. 285), an inheritance has no interruption, and goes direct to the heirs of the inheritor. Said Rabha to R. Na'hman: But the testator himself has controverted this with his saying, "after you, so and so shall inherit." He said so because he meant that he might do so. But the law dictates that there shall be no interruption; hence this stipulation is against the biblical law, and must therefore not be considered.

There was a man who said in his will: My estates shall belong to A and after A to B. A, however, was a legitimate heir, and when he died, B came and demanded the estate. And R. Elish in the presence of Rabha was about to decide that B's claim was a right one. Said Rabha to him: Judges who are arbitrators (*i.e.*, who do not decide according to the strict law, but mediate between the parties) judge so. This case, however, was the same as that concerning which R. Aha b. Ivia sent his message (that inheritance has no interruption), and he became ashamed. Rabha then applied to him [Is. lx. 22]: "I the Lord will hasten it in its time" (*i.e.*, Elish was ashamed that were it not for Rabha he would have acted against the law). And Rabha comforted him, in that Providence would not leave such an upright man to act wrongly, and therefore it so happened that he (Rabha) was present. Hence he had no need to fear the justice of his decisions in other cases.

MISHNA VII.: If one bequeathed his estates to strangers, leaving his children without anything, his act is valid; but he is condemned in the eyes of the sages. R. Simeon b. Gamaliel, however, maintains that if his children were not going in the right way he might be mentioned among the good men.

GEMARA: The schoolmen propounded a question: Do the rabbis differ with R. Simeon or not? Come and hear: Joseph b. Joezer had a son with bad habits; and he had also a measure of dinars. And because of his son, he consecrated the dinars to the Temple. The son went and married the daughter of Gadil, the master of the crowns for King Janai; and when his wife had borne a child, he bought a fish for her, and found in it a pearl. Said his wife to him: Do not carry it to the court of the king, as they will appraise it cheaply and will take it from you. Take it, rather, to the treasurer of the sanctuary; but do not mention any price for it, as if you should do so, you will have no right to change it thereafter, as there is a rule that concerning a sanctuary the upset price is considered final, and one has no longer right to retract, as after delivery to a commoner. He did so, and it was appraised by the treasurer at thirteen measures of dinars. The treasurer then said to him: We have now in the treasury only seven measures of dinars, as the taxes are not yet collected. And he answered: Let the remaining six measures be consecrated to heaven. And the treasurer re-

corded in his book: Joseph b. Ioezer brought to the sanctuary one measure, while his son has brought six. According to others, they wrote: Joseph brought to the sanctuary one measure, and his son took from it six measures. Now, as they wrote Joseph brought in, it is to be inferred that he acted rightly. But perhaps, on the contrary, as according to others they recorded "his son took out seven," it may be said that they considered the act of the father unlawful. Therefore from this Boraitha nothing is to be inferred. However, how should this question be decided? Come and hear: Samuel said to R. Jehudah: Do not transfer an inheritance from any one, even from a bad son to a good one; further, nor from a son to a daughter.

The rabbis taught: It happened in the case of one whose children had evil habits, that he bequeathed all his estates to Jonathan b. Uziel; and the latter sold a third of them, consecrated a third, and the remaining third he returned to the deceased's sons. And Shamaï the Elder came to rebuke him for having so done with estates bequeathed to him, contrary to the will. And he answered him: Shamaï, if you have the right to make null that which I have sold and that which I have consecrated, then you have also a right to take away the property which I have returned to the children. But as you have no right to do the former, you have no right to exclaim against my latter act (*i.e.*, if you consider me the owner of the estates bequeathed to me, then I may do with them what I please; and if I am not the owner, then also what I have consecrated should be annulled; and as you cannot annul the consecration, because the estate was bequeathed to me without any condition, consequently the estates are mine, and you cannot take away the property from the children.) And Shamaï exclaimed: The son of Uziel has vanquished me! the son of Uziel has vanquished me! But what was his opinion before he came to rebuke him? He did so because of what happened in the city of Beth Horon. There was one of whom his father vowed that he should not derive any benefit from him; and when he made a banquet for the marriage festival of his son, he said to his neighbor: I make you a present of this courtyard and all that is prepared for the banquet, but only to the end that my father should be able to come and eat with us at that banquet. And his neighbor answered: If all this is mine, I consecrate it to heaven. And the

donor rejoined: I have not given you my property to be consecrated to heaven. Rejoined the neighbor: Then you have given all this to the end that your father and you shall eat and drink and be reconciled, and the sin shall rest on my head. And the sages decided that a gift which cannot be consecrated by the benefactor is not to be considered a gift at all.*

MISHNA *VIII.*: If one says: "This is my son," he is to be trusted; but, "my brother," he is not to be trusted. He may, nevertheless, share with him the inheritance of his father (when there are only two; but if there are three, the third, who does not recognize him as his brother, is not bound to share with him, and so he receives a half of the share of the brother who does recognize him). If the doubtful man dies, the estate must be turned over to him from whom it was taken. If, however, the deceased left other estates besides those he inherited with his brother, all the brothers share equally (because in the case of that one who testified that he is a brother to all, he has no right to the inheritance without the other brother).

GEMARA: The Mishna states: "'This is my son,' he is to be trusted." To what purpose is it stated? Said R. Jehudah in the name of Samuel: For the purpose that he may inherit from him, and to acquit his wife of Yeboom. But was it necessary for the Mishna to state that he might inherit from him? Is it not self-evident (*i.e.*, if its testimony was because of inheritance only, he could give it as a present)? It was necessary to state that he is to be trusted to acquit his wife of Yeboom. But this also we have learned elsewhere: If one says while dying: "I have children," he is to be trusted (and his wife is acquitted of Yeboom). If, however, he says: "I have brothers somewhere," and he was childless, he is not to be trusted (the intent being that his wife should be prohibited from remarrying). That Boraitha speaks of when the people were not aware of any brothers, and our Mishna came to teach that even when people were aware that one had brothers he is to be trusted if he testifies that such a person was his son.

R. Joseph in the name of R. Jehudah, quoting Samuel, said: Why was it said: One is trusted in testifying that he has a son; because if one testify that he has divorced his wife, he is to be trusted? And Joseph himself exclaimed: Lord of Abraham!

* In the text is repeated here from Tract Sukka, p. 36, which see.

He sustains a thing which we have learned in a Mishna by a thing which was not learned at all. Therefore, if this was taught, it must be thus: R. Jehudah in the name of Samuel said: Why is one trusted to testify, "This is my son" (and with this to acquit his wife of Yeboom)? because, if he likes, he can divorce her. Said R. Joseph again: Now, when we come to the conclusion that the theory of "because" may be used, we may infer that if one testify he has divorced his wife, he is to be trusted; because, if he wishes to make her free, he may give her a divorce then. When R. Itz'hak b. Joseph came from Palestine, he said in the name of Johanan: A husband is not trusted to testify that he has divorced his wife. R. Shesheth, when he heard this, made a gesture implying: Now the "because" of R. Joseph is gone. Is that so? Did not Hyya b. Abin say in the name of R. Johanan: The husband is trusted? This presents no difficulty. If his testimony is of a time long past, he is not to be trusted; and if of a short period of time (*e.g.*, a day or two before, so that this testimony should be used for the future), he is to be trusted. The difference is in case she was suspected of adultery a month before his testimony: If he is trusted, then she committed no adultery; and if not, the suspicion must be investigated.*

The schoolmen propounded a question: Should one's testimony for the time past, in which he is not to be trusted, be considered for the future (*e.g.*, if he testified in January that he had divorced in December, which does not hold good in case of the suspicion stated above, does it hold good for the time after the testimony took place? And the question is: Can one's testimony be divided—that for the past he should not be trusted, and for the future he should)? R. Mary and R. Zebid: According to one we may divide, and according to the other we may not. But why should this case be different from the following case stated by Rabha: If one testifies that his wife has committed adultery with so and so, if he has another witness, the man can be put to death in accordance with the law that two witnesses have to testify to a crime—we conjoin his testimony to the stranger's and they are considered two witnesses; but his wife cannot be executed, as it is unlawful that

* The commentators try to explain at length with illustrations, which we omit as of no importance.

a husband should be a witness against his wife (hence we see that the testimony is divided: for one it is considered, and for the other it is not)? It may be said: Concerning two we do divide, but not concerning one person.

There was one who, while dying, was questioned concerning his wife (*i.e.*, he was childless, and they questioned him if his wife was divorced from him, so that she might remarry after his death or she remained liable to Yeboom)? And he answered: She is fit to marry even the high priest * (*i.e.*, I have divorced her). Said Rabha: We may trust him, as it is said above by Hyya b. Aba in the name of R. Johanan: A husband is to be trusted in testifying that he has divorced his wife. Said Abayi to him: But did not R. Itz'hak b. Joseph in the name of R. Johanan say: He is not to be trusted? And Rabha rejoined: But have we not explained above, that one speaks of the past, and the other of the future? Rejoined Abayi: Shall we rely upon an explanation in such a rigorous law as marriage is? Then said Rabha to R. Nathan b. Ami (before whom the case came: Investigate this matter (as probably Abayi is right). There was another, of whom it was known to the people that he had no brothers, and so, also, he testified while dying. However, it was murmured by some that he had brothers in some other country. And R. Joseph decided: There is no risk in allowing his widow to remarry, as he not only said so while dying, but it was known to the majority. Said Abayi to him: But is it not murmured that there are witnesses in the sea-country that he has brothers? (Answered R. Joseph:) But at present there are no witnesses, and in a similar case, R. Hanina said elsewhere: Should we prohibit a woman from marrying because some say that there are witnesses in the north? Rejoined Abayi: If Hanina had decided leniently concerning a woman in captivity, whose prohibition to marry a priest is rabbinical only, should we compare our case, which is biblical, if the childless deceased left brothers? And Rabha said to Nathan b. Ami, who had charge of this case: Investigate this matter.

“ ‘*This is my brother, he is not.*’ But let us see what the

* The commentators find difficulty in explaining the meaning of this expression. It seems to us, however, very simple. He meant: I divorced her before having intercourse with her, and she is still a virgin, whom a high priest may marry.

other brothers say. If they admit that the one in question is their brother, why should he share with one only? We must then say that they deny it. Then how is the latter part, "If he had estates from other sources, the brothers have to share," to be understood? They do not deny that he was their brother. It means when the others say, "We do not know whether he is a brother or not."

"*It must be turned over to him,*" etc. Rabha questioned: How is it if the same estate were improved of itself—e.g., if it were a young tree, and it grows up, etc., there is no question of the improvement being through the labor of the deceased, as this is similar to the case in which one got estates from other sources; but the question is: If the improvement was of itself? This question remains undecided.

MISHNA IX.: If one dies, and a *διαθηκη* was tied to his body, it is not to be considered at all. If, however, while sick he had submitted it to some one, be he his direct heir or not, it must be listened to.

GEMARA: The rabbis taught: What is to be considered a *διαθηκη*? (Repeated here from Middle Gate, p. 40, from the quotation "Wills" to the end of the paragraph. See there.)

Rabba b. R. Huna was sitting in the balcony of Rabh, and declared the following in the name of Johanan: If a sick person said to witnesses: "Write, and give a mana to so and so," and before they did so he dies, it must not be listened to, for the reason that probably the deceased had in mind to give title in the case by a deed only; and as such a deed cannot be written after death, nothing can be done. Said R. Elazar to the disciples who were also sitting there: Bear in mind this Halakha, as it is for practice. R. Shezbi, however, said: The reverse was the case: R. Elazar declared the Halakha, and R. Johanan told them to bear it in mind, etc. Said R. Na'hman b. Itz'hak: It seems to me that R. Shezbi is right, as, if R. Elazar declared the Halakha, it was necessary for R. Johanan to approve it; but if Johanan declared it, was it then necessary for Elazar to give his approval to what his master said? And secondly, from the following, it is to be inferred that Elazar had declared the above, namely: Rabin sent a message in the name of R. Abuhu: It shall be known to you that R. Elazar sent a message to the sages in exile, in the name of our master (Rabh): If a sick person said,

Write, giving a mana to so and so, and it was not done until he had died, nothing is to be done (for the reason said above). (R. Jehudah in the name of Samuel, however, said: They may write and give.*) But R. Johanan said (though the Halakha so prevails): It must, nevertheless, be investigated. What shall be investigated? When R. Dimi came from Palestine, he said the following two things: (a) A will which is written at a later period abolishes a will written previously (if title was not given by a ceremony of a sudarium). (b) If a sick person said, "Write, giving a mana to so and so," and died, it must be investigated, whether with the expression "write" the testator meant to strengthen the act. In that case it may be done; and if not, it must not. R. Aba b. Mamel opposed from the following: If one in good health said to witnesses, "Write, giving a mana to so and so," and suddenly died, nothing is to be done. From which it is to be inferred that if this were said by a sick person it would be listened to? He himself answered thereafter: If the expression "write" was only to confirm the act, then it may be listened to. But how can we know what he meant? As R. Hisda said elsewhere: If written, and confirmed by the ceremony of a sudarium, no retraction can take place. So also in our case. If it was said by the sick person, "Give to him, and also write," then the last expression may be considered as a confirmation of this act; and it may be so done.

It was taught: R. Jehudah in the name of Samuel said: The Halakha prevails, they may write and give; and so also said Rabha in the name of R. Na'hman.

MISHNA X.: If one wishes to bequeath his estate to his children (*i.e.*, it speaks of one who remarries and does not wish that the children by his first wife should lose their share in his estate after his death), he must write: I bequeath my estate to them from to-day and after my death (*i.e.*, the estate belongs to them thenceforward, but not the products until after his death). So is the decree of R. Jehudah. R. Jose, however, maintains: It is not necessary to write "from to-day."

If one wrote: "I bequeath my estate to my son from to-day, and after my death," he has no longer any right to sell his estate, because it is bequeathed to his son; and his son, also, has

no right to sell it because it is still under the control of his father. If, notwithstanding this, the father has sold, the products thereof are sold until he dies. If the son, however, sold, the buyer has nothing therein until the father dies.

GEMARA: But how if he has written "from to-day and after my death"? Have we not learned in a Mishna: If one wrote in a divorce, "from to-day and after my death," it is considered a doubtful divorce, so that after his death his widow cannot marry his brother, but must perform the obligation of Halitzah. (This is no objection) as there we are doubtful as to the explanation of his words. Does he mean by the words, "after my death," to be a condition (*i.e.*, if I die she shall be divorced from to-day), or as a retraction (*i.e.*, the last words retract the former), and therefore she cannot marry. Perhaps the divorce was valid, and it is prohibited to her to marry a brother-in-law. But she is under the obligation of Halitzah. Perhaps the divorce was invalid. In our case, however, it is to be explained, the body of the estate is bequeathed "from to-day," but the products, "after my death."

"*R. Jose . . . It is not necessary,*" etc. Rabba b. Abuhu became sick. R. Huna and R. Na'hman came to make him a sick call. Said R. Huna to R. Na'hman: Question him whether the Halakha prevails with R. Jose. And he answered: I am not aware of the reason of his statement. To what purpose, then, should I ask if the Halakha so prevails? Rejoined R. Huna: I will tell you the reason later, and meanwhile you may question him with whom the Halakha prevails. And he did so. And Rabba answered: So said Rabh: The Halakha prevails with R. Jose. When they went out from him, said R. Huna: The reason of R. Jose's statement is because the date of the deed testifies to whom from that day the estate belongs. And so also we have learned plainly in a Boraitha.

Rabha questioned R. Na'hman: According to R. Jehudah, who requires that there shall be written "from to-day," etc., how is it, if this was made with the ceremony of a sudarium? (Shall we assume that as the above ceremony was already performed title is acquired, and nothing further is to be added; or, even then, it must be written in the deed "from to-day," etc.?) And he answered: In such a case it is not necessary. R. Papa, however, maintains that there is a difference in the

tenor of the deed. If it was written: We have secured the ceremony of a sudarium, which he agreed to and made, then nothing is needed to be added. If, however, it was written: He agreed, and we performed the ceremony, then it is necessary to write, "from to-day," etc. (and the reason is, that the latter expression may be explained as intimating that he agreed that possession should come after death, and thereto we have joined the ceremony of a sudarium). R. Hanina of Sura opposed: Are there such things as we do not know, and we must rely upon the scribes? The scribes of Rabha and of Abayi were questioned, and it was found that they were aware of the difference mentioned above. R. Huna b. R. Joshua, however, said: There is no difference between the two versions mentioned above; as to either of them, nothing is to be added. But if "sudarium" was not mentioned in the deed at all, and there was a memorandum: e.g., "The undersigned testify that a memorandum was made by so and so," etc., then, according to R. Jehudah, "from to-day," etc., is needed. Said R. Kahana: I repeated this discussion before R. Zebid of Nahardea, and he told me: You have learned this so. We, however, have learned it as follows: Said Rabha in the name of R. Na'hman: If a sudarium is mentioned, no matter what version was used, nothing is needed to be added; but in respect to a memorandum (illustrated above) R. Jehudah and R. Jose differ.

"*I bequeath my estates to my son,*" etc. It was taught: If the son sold out and then died while the father was still alive, according to R. Johanan the buyer has nothing in it; and according to Resh Lakish, title is given to the buyer after the father's death. The reason of their difference is, because the former holds that the sale of the products ought to be held similar to the sale of the body; and as the products could not be sold by the son, as he had nothing in them so long as the father was alive, so he could not sell the body. And the latter holds that the body is not subordinate to the products; as the body belonged to the son, the sale is valid.

R. Johanan objected to Resh Lakish from the Boraitha stated above, p. 289, which says: The estate must be turned over to the heirs of the first; and according to you, it ought to be to the heirs of the testator. And he answered: It was already ex-

plained by R. Hoshua in Babylon that there was a difference when the testator said plainly "and after you." And so also it was answered by Rabh, to a contradiction made before him by Rabha b. R. Huna. But have we not learned in a Boraitha that the estate must be turned over to the heirs of the testator? In the resolution of this case, Tanaim differ: "My estates are bequeathed to you, and after you to B; A sells out, and consumes the amount. B has a right to recover it from the buyers after the death of A. So is the decree of Rabbi. R. Simeon b. Gamaliel maintains B has a right only to what remained from A." A contradiction was made from the following: My estate is bequeathed to you, and after you to B; A may sell and consume it. So is the decree of Rabbi. R. Simeon b. Gamaliel, however, maintains that A has a right to the products only. Hence Rabbi and R. Simeon contradict themselves in the two Boraithas. This presents no difficulty. The statement of Rabbi in the later Boraitha is concerning the products only; and the statement in the first Boraitha is concerning the body. There is also no contradiction in R. Simeon's statements, as his statement in the last Boraitha means that so is the law to start with; and his statement in the former means, if it were already done.

Said Abayi: Who is called a crafty villain? He who advises A to sell the estate (bequeathed to him for his life only), relying upon R. Simeon b. Gamaliel's decision. Said R. Johanan: The Halakha prevails with R. Simeon b. Gamaliel. He, however, admits that if A gives the same as a present to C, when he is dying, he has done nothing. And what is the reason? Said Abayi: Because C ought to acquire title to it only after the death of A. But at that time B had already acquired title, as it was bequeathed to him after A's death. But did Abayi say so? Was it not taught: To a gift presented by one who is dying, at what time is title given? According to Abayi, with the death; and according to Rabha, after death. Hence C ought to have the preference, according to Abayi's last statement, as to B it is bequeathed after death? Abayi has retracted from his last statement. But do you know where he has retracted from the last statement? Perhaps he has retracted from the first. Yet it cannot be borne in mind that there is a Mishna which states as follows: If one should say:

"This shall be your divorce if I should die"; or, "It shall be yours if I should not recover from this sickness"; or, "After my death," he said nothing. (Hence this Mishna is a direct contradiction to Abayi's statement that title is given *with* the death. If it were so, the divorce would be valid when he said: This shall be your divorce when I die. And therefore it must be supposed that he retracted from the later statement.)

Said R. Zera in the name of R. Johanan: The Halakha prevails with R. Simeon, even in case in the estate in question there were included bondsmen, and they were freed. Is this not self-evident? Lest one say that the testator may claim: "I did not bequeath to you my estate, you shall transgress * with them," it came to teach us that it does not matter. And R. Joseph said in the name of the same authority: Even if he had made of them shrouds for a corpse. Is this not self-evident? Lest one say that the testator may claim: "I did not give it to you for the purpose that you should make from it things from which it is prohibited to derive any benefit," he came to say it does not matter.

R. Na'hman b. R. Hisda lectured: If one said: "This citron is given to you as a gift, and after you to B," and A became seized of it, and performed his duty as owner on the first day of Tabernacles, it depends upon the difference between R. Simeon and Rabbi whether it was done lawfully. R. Na'hman b. Itz'hak opposed: The above Tanaim differ in the case whether the sale of the products be considered the same as the sale of the body (explained above), or not? But in our case, if it was not presented to him to the end that as owner he should perform the duty of that day, for what, then, was it given to him? Therefore it must be said that all agree that A, who did as owner his duty of that day, acted lawfully. But if he has consumed or sold it, it depends upon the difference between the Tanaim mentioned above whether the sale is valid, or A has to pay for it.

There was a woman who had a tree on the estate of R. Bibbi b. Abayi; and each time she went to gather the products of the tree, it made him angry. She then sold it to R. Bibbi for his life, with the condition that after his death it should be

* The ancient Hebrew as well as the Roman law prohibits the freeing of a slave without good reason; and also the deriving of benefit from shrouds, or anything else belonging to a corpse.

turned over to her or her heirs. He, however, transferred it to his minor son (to the end that the tree should remain his for a long time, as according to the law a minor acquires but cannot give title, and this act was according to R. Simeon b. Gamaliel). Said R. Huna b. R. Jehoshua: Because you are weak you speak weak words.* Even Simeon b. Gamaliel admits that his statement holds good only when he transferred it to some one else; but not if to himself.

Rabha said in the name of R. Na'hman: If A said to B, "I give you this ox as a present, with the stipulation that you shall return it to me," and B consecrated it and afterward returned it, the ox is consecrated, and B has fulfilled his duty. Said Rabha to R. Na'hman: But, after all, what has he returned to him? The ox being consecrated, he cannot derive any benefit from it. Rejoined R. Na'hman: But did B depreciate the value of the ox? Has he not returned it as he got it? R. Ashi, however, said: It must be investigated how the stipulation reads. If "You shall return it," then he acted correctly, as he did return it. But if "You shall return it *to me*," which means it shall be fit for me, but if he has consecrated it, it is no more fit for him. Consequently it cannot be considered returned.

R. Jehudah said in the name of Samuel: If A has bequeathed his estate to B, and B says "I do not want it," he nevertheless acquires title, even if he still protests he does not want it. R. Johanan, however, says: He does not. Said R. Abba b. Mamel: And they do not differ. If B protests at the very time the deed of gift was given to him, he does not acquire title; but if he first kept silent, and afterward protested, title is acquired.

The rabbis taught: If a sick person said, "Give two hundred zuz to A, three hundred to B, and four hundred to C," it must not be understood that he who is mentioned first in this deed acquires title to that amount; and, therefore, if a creditor comes with a promissory note of the deceased, it may be collected from all of them. If, however, it reads, "Two hundred zuz to A, and after him three hundred to B, and after him four hundred to C," then the one who is mentioned first in

* The commentators' explanation of this is that Abayi was of the family of Eli, who according to tradition were short-lived. Therefore the word "weak."

the document acquires title to that amount; and the promissory note must be collected from the last. And if the money he receives does not suffice, it must be collected from the one mentioned before him; and if his does not suffice, it must be collected from the first.

The rabbis taught: If a sick person said, "Give two hundred zuz to my first-born son so and so, who is worthy to have them," he may take them, and also the double share belonging to a first-born. If, however, the sick person said, "Give him such an amount for his first-born privilege, the son has the preference to choose which is better for him—the amount bequeathed or the double share prescribed for him. The same is the case if the sick person said, "Give two hundred zuz to my wife, who is worthy of them." She takes them and also what belongs to her according to her marriage contract. If, however, he said, "Give them to her for her marriage contract," she has the choice of taking them or that which belonged to her according to her marriage contract. If a sick person said, "Give two hundred zuz to my creditor B, who is worthy of them," he may take them, and also collect what the deceased owes him. But if he said, "Give them to him for my debt," then he takes it for the debt.

How is the last sentence to be understood—because he said he is worthy of them, he shall take both the two hundred zuz and his debt? Why not explain, as he had a right to them because of my debt? Said R. Na'hman: Huna told me that this Boraitha is in accordance with R. Aqiba, who is particular concerning the version as it is said (Chap. IV., Mishna 2): R. Aqiba admits, etc. From which we see that he gives his attention to a superfluous word. The same is it with the case in our Boraitha—that the words, "as he is worthy of them," are superfluous; and according to R. Aqiba they are said because he wants to add them to his debt.

The rabbis taught: If a sick man said, "I have a mana with so and so," the witnesses may write this, although they are not aware that such is the case. And therefore, when his heirs come to collect from the debtor, it is for them to bring evidence. So is the decree of R. Meir. The sages, however, maintain that the witnesses must not write unless they are aware that so it is. And therefore, the heirs may collect this debt without any

other evidence. Said R. Na'hman: Huna told me: The Boraitha must be so understood. R. Meir said: They must not write; and the sages: They may. And even R. Meir said so because he feared that the court, before which the case of "collection" should come, would err, and approve the deed without any investigation, if the witnesses who signed the deed testified only to what the deceased said, or they were aware that the contents were true. And the sages maintain: Usually a court does not err, and can be relied upon to give proper attention to this matter. Said R. Dimi of Nahardea: The Halakha prevails that it must not be feared the court will err. But why should this differ from the following case stated by Rabha: The ceremony of Halitza must not be made by the court, unless they know the persons? And the same is the case with a denial (of a woman, betrothed in childhood, who on arriving at majority denies the marriage before the court; and according to the law she may remarry without any other act). And therefore the witnesses who were present may write a testimony of this act, although they themselves did not know the persons. And the reason why the court must not perform the ceremony of Halitza, unless they know the persons, is because it is to be feared that the court before which she may come to remarry will not investigate whether she is the same person who had to take Halitza. (Hence we see that error by the court is to be feared?) This is no objection. A court usually does not investigate the act of a former court; but the acts of witnesses, it does.

MISHNA XI.: The father has a right to pluck the products of trees which are found on the estate bequeathed to his son, after his own death, and may present them to whom he pleases. If, however, the plucked fruit remains after his death, they belong to his heirs.

GEMARA: The plucked fruit only, but not that which is attached to the trees, although ready to be plucked (*i.e.*, such belongs to the son, to whom the estate is bequeathed after his father's death)? Have we not learned in a Boraitha that in case the fruit was ripe, under the control of the bequeather, it belongs to the buyer if he sold it before his death? Said Ula: This presents no difficulty. Our Mishna treats of when he bequeathed to his son, and it may be supposed that his last will

was that from that remaining on the tree his son should derive benefit; and the Boraitha speaks of when he has bequeathed his estate to a stranger.

MISHNA XII.: If he left grown-up and minor sons, the grown ones have no right to derive any benefit on account of the minors, nor have the minors a right to same on account of the older brothers (*e.g.*, the older ones have no right to dress themselves at the expense of the inheritance before the division, nor should the minors be supported from the inheritance); but they must divide the inheritance equally. If the older ones have married at the expense of the inheritance, the same amount must be added to the shares of the minors. However, the latter have no right to claim for any addition if their older brothers have married while their father was still alive, as the amount expended for their marriages is considered a gift from their father.*

The very same is the case with grown-up and minor daughters. All of them must receive an equal share. However, in one respect preference is given to daughters who were left together with grown-up sons. The daughters must be fed from the inheritance at the charge of the sons, which is not the case with minor daughters who were left together with grown-up ones.

GEMARA: Rabha said: In the case of the oldest brother who has dressed himself at the expense of the house before division, his act is lawful (and nothing is to be deducted from his share). But does not our Mishna state: "Grown-up ones have no right to derive any benefit," etc. Our Mishna speaks of when they are idle, and do nothing for the benefit of the house. If idlers! Is it not self-evident? Lest one say that, nevertheless, they would be pleased that their brother should be nicely dressed, it comes to teach that it is not so.

"*Grown-up and minor daughters*," etc. R. Abuhu b. Genibh sent a message to Rabha: Let the master teach us: How is it if a woman has borrowed money, consumed it, and thereafter she married without paying her debt, and brought estates with her at marriage? Must her husband pay her debt, or not? Shall we assume that the husband is considered a buyer of the estates brought, consequently he has not to pay, as the law

* So is it explained in the Gemara by R. Jehudah.

dictates that a loan made without a deed cannot be collected from a buyer; or is he considered an heir, and must pay his wife's debts, even when contracted without any deed? And Rabha answered: This we have learned in our Mishna: If the grown-up daughters have married, the minors may do the same. Is this not to be interpreted that if the grown-up daughters have borrowed money from the estate also belonging to the minors, the minors shall do the same by collecting the debts from their sisters' husbands? Nay! The Mishna means to say that they take the same amount from the inheritance as their sisters did. But this is not so. As R. Hyya taught plainly: If the older ones have married at the charge of the inheritance, the minors may collect the amount from their husbands? (Hence we see that the husband is considered an heir, and must pay?) This cannot be taken for support, as a law made in connection with an inheritance for the purpose of marriage is considered as public and known to the people, and also in the light of a deed which is to be collected from encumbered estates.

Said R. Papa to Rabha: Why did you try to decide the question from R. Hyya's Boraitha? Was the same not decided by Rabbin's letter: If one dies leaving a widow and a daughter, the widow must be supported from the deceased's estate. If the daughter has married or dies, the widow is still to be supported from the estate. Said R. Jehudah the son of R. Jose's sister: Such a case came before me, and it was decided that a widow must still be supported from the estate. Now, if the husband is considered an heir, it is correct that his widow should be supported from his estate; but if he is considered a buyer, why should she be supported from his estate? Does not a Mishna state that for the support of a widow and daughters, encumbered estate must not be taken away? Said Abayi: What news has Rabbin sent in his message? Have we not learned this in a Mishna: "The following is not to be returned in the jubilee year: The double share taken by a first-born and the inheritance of a woman taken by her husband"? Hence we see that the husband is considered an heir? Said Rabha to him: And even after he has sent the message, do we then know that it is in accordance with the law? Did not R. Jose b. Hanina say (Middle Gate, p. 255) that the husband takes away

from the buyer? Therefore said R. Ashi: The rabbis have enacted that in some respects the husband should be considered as an heir, and in some respects as a buyer; and have so done on his account. Concerning the jubilee year, it is better for him that he should be considered an heir, for the purpose that he should not be compelled to return the inheritance of his wife, and concerning the case of R. Jose b. Hanina (stated above) he is to be considered as a buyer, that he should not suffer any damage; and in the case of Rabbin they have considered him as an heir, to the end that the widow should not suffer any damage. But why did the sages consider him as a buyer in the case of R. Jose b. Hanina? Do not the buyers (from whom he takes away the property) suffer? Therein they themselves cause that they should suffer, as they ought not to have bought goods from a married woman, who lives with her husband, without his consent.

CHAPTER IX.

RULES AND REGULATIONS CONCERNING THE SUPPORT OF UNMARRIED DAUGHTERS AFTER THE DEATH OF THEIR FATHER, IF AMONG THE CHILDREN WERE AN HERMAPHRODITE OR AN ANDROGYN. MAY OR MAY NOT ONE BEQUEATH HIS ESTATE TO STRANGERS IF HE HAS CHILDREN? DOES THE SECOND WILL ABOLISH THE FIRST? IF A SICK PERSON RECOVERS AFTER MAKING A GIFT WHILE SICK, MAY HE RETRACT OR NOT? IF SUDDEN DEATH OCCUR TO MANY PERSONS, AND IT IS NOT KNOWN WHO DIED FIRST, AND EACH OF THE HEIRS CLAIMS FOR HIS BENEFIT.

MISHNA *I.*: If one dies, and leave sons and daughters, if the inheritance is of great worth, then the sons inherit, and the daughters must be supported from it; and if a moderate one, the daughters must be supported, and the sons may go a-begging. Admon, however, said: Because I am a male shall I suffer? Said Rabban Gamaliel: It seems to me that Admon is right.

GEMARA: What is to be considered great worth? Said R. Jehudah in the name of Rabh: It shall be sufficient for all of them to be supported for twelve months. And he (Jehudah) added: When I told the Halakha before Samuel, he said: Such is the decree of R. Gamaliel b. Rabbi. The sages, however, maintain: It shall suffice to support all of them until the daughters become of age. So also it was taught by Rabbin, according to others by Rabba b. b. Hana, when he came from Palestine, in the name of R. Johanan: If the inheritance suffices to support all of them until the daughters become of age, it is considered of great worth; and if less, it is considered moderate. How is this to be understood? If it does not suffice to support all of them, shall the daughters take the entire inheritance, leaving nothing for the sons? Therefore said Rabha: There must be deducted from the inheritance the amount which will suffice for the daughters until they become of age; and the remainder shall be given to the sons.

It is certain that if for some reason the estates become less

in value after the father's death, and do not suffice for the support of the daughters until they become of age, and also for the sons' support, both have already acquired title, and must be satisfied with that which falls to their lot (*i.e.*, the daughters have no right to claim that they shall be supported until of age from the share of their brothers). But how is it if the estate increased in value after death? Shall we assume that the increase belongs to the heirs, and therefore the sons may have the benefit of it? Or, as they had nothing in it when their father died, they are considered entirely cut off from this inheritance, and have nothing to do with the increase? Come and hear what R. Assi said in the name of R. Johanan: If orphans hastened and sold out from this inheritance before the daughters summoned them, the sale is valid, and the daughters have no right to take it away from the buyers, according to the rule that it cannot be collected from encumbered estate for the support of the daughters. (Hence we see the sons are considered heirs, notwithstanding that the estate was not of great worth.) Consequently they have a share in the increase.

R. Jeremiah was sitting before R. Abuhu, and questioned him as follows: If the estates were of great worth, but there was a promissory note in the hands of a creditor, which ought to be collected from the estates, should the estates, because of the note, be considered moderate, so that the support should be for the daughters and the sons should go a-begging? Or, until collected, should all of them be supported, without taking into consideration that after collecting nothing might remain for the support of the daughters? And should you decide that the promissory note, although not yet collected, diminishes the value of the estates, for the reason that the amount due will be collected in any event, even should the creditor die, how is it if the deceased left a step-daughter whom he has to support, according to the marriage contract of his wife, until she shall become of age, and the amount of her support diminishes the estate from being of great worth, and stamps it moderate? How, then, should the inheritance be considered, should the step-daughter die, and then, the obligation being gone, the estates remain of great worth. There is still another question. If the deceased left a widow and a daughter, and the estates left could support only one of them, who

has the preference? And R. Abuhu answered: Go to-day, and come to-morrow. And when he came he said to him: Of all the questions, I can decide the last one. As R. Aba said in the name of R. Assi: The sages have enacted that when there is a widow with a daughter she shall have similar treatment to that of a sister who remains with her brother. As in the latter case, if the estate is moderate she must be supported, although her brothers remain beggars, so also the widow as against a daughter—the widow must be supported and the daughter may go a-begging.

“Admon, however, said: Because I am a male,” etc. How is this to be understood? Said Rabha: He means to say: Because I am a male, and ought to inherit all the estates where the inheritance is of great worth, leaving for my sister only the support for her livelihood until of age, shall I remain a beggar when there is a moderate estate?

MISHNA II.: If one leave sons, daughters, and an hermaphrodite (if it is doubtful whether male or female), and the inheritance is of great worth, the males may count same among the females; but when the inheritance is moderate, the females may count same among the males.

If one say: “If my pregnant wife should bear a male, he shall take a mana,” and she bears a male, the mana is to be given to him; “If a female, she shall take two hundred zuz,” she takes two hundred. If a male a mana, and a female two hundred zuz, and she had born a male and a female? The male takes one hundred and the female two hundred zuz. But if she bears an hermaphrodite, he takes nothing. If, however, he said: “What she shall bear shall take,” then he takes accordingly. And the same is the case if there were no heirs but he—he inherits all.

GEMARA: The Mishna states: They count same among the daughters, which means he shall be treated like them. But does not the later part state: If she bears an hermaphrodite, he takes nothing? Said Abayi: It means that the males counted him among the females; but the latter have the right not to accept him, and he remains without any support. Rabha, however, maintains: They pass him and he must be similarly supported. And the latter part of our Mishna is in accordance with Rabban Simeon b. Gamaliel of the following Mishna: If

she bears an hermaphrodite or an androgyn, which is at times a male and at times a female, R. Simeon b. Gamaliel said: No sanctity rests upon them. (The cited Mishna treats: If one made a vow for the offspring of a gravid cow—if a male, it shall be a burnt-offering; and if a female, a peace-offering.)

An objection was raised from the following: "An hermaphrodite inherits like a son, and is supported like a daughter." And this can be correct only according to Rabha: That he is considered an heir, like a son, in a moderate inheritance; and is supported, like a daughter, in one of great worth. But according to Abayi, who said above that he takes nothing, how do you find that he shall be supported like a daughter? Even according to your theory, how do you explain Rabha's statement, that as an heir, like a son, he takes something of a moderate inheritance? In such a case the sons take nothing; hence he means to say that he is *considered* an heir like a son—to be a beggar. So also you can explain the Mishna: He is in condition to have support like a daughter, but, nevertheless, he does not get any.

"If one says: *If my pregnant wife shall bear a male,*" etc. Shall we assume that a daughter is better to him than a son (as the Mishna says, "If a male one hundred, and a daughter two hundred")? Concerning inheritance, a male is better to him, as he bears his name; and concerning a gift, a daughter is better to him, as it is more difficult for her to make a living than for a male. Samuel, however, maintains that the Mishna treats of when his wife was pregnant with her first child; and it is in accordance with R. Hisda, who said elsewhere: If the first child is a female, it is a good sign for future sons, according to some because she will educate the sons; and according to some, that she should not be afflicted by a covetous eye. Said R. Hisda: As for me, I always give preference to females over males. And if you wish, it may be said that our Mishna is in accordance with R. Jehudah in the following Boraitha: It is a meritorious act for one to support his daughters, and so much the more his sons who occupy themselves with the Torah. So is the decree of R. Meir. R. Jehudah, however, said: It is a meritorious act to support the sons, and so much the more to support the daughters, because of their humiliation (if they should have to beg).

There was one who said to his wife: I bequeath my estate to the child with which you are pregnant. Said R. Huna: This means that he designed to give title to an embryo, and an embryo cannot acquire title. R. Na'hman objected to R. Huna from our Mishna, which states: If my wife shall bear a male, he shall take a mana, etc. And he answered him: I do not know who has taught our Mishna (*i.e.*, I do not find our Mishna to be in accordance with the majority, nor a single one of the sages). But let R. Na'hman say that the Mishna treats of when the bequeather said: I bequeath the estate to the child after my wife has borne it? R. Huna is in accordance with his principle that the child does not acquire title even after birth. (As it was taught:) R. Na'hman said: If one bequeaths to an embryo, title is not given; but if he said, "after he is born," title is given. R. Huna, however, maintains that even then title is not given. But R. Shesheth is of the opinion that in either case title is given. And he added: I deduce my statement from the following Boraitha: "If a proselyte supposed to be childless dies, and Israelites have robbed his estate, and thereafter they hear that he has a son, or that his wife is pregnant, they are obliged to return it. If, however, they have returned it, and thereafter they hear that the son is dead, or that his wife has had a miscarriage, and they again take the estate, he who made a hazakah in the second instance has acquired title, but he who made the same in the first instance has not." Now, if it be remembered that an embryo does not acquire title, why should title not be given to them who made a hazakah in the first instance? Said Abayi: There is a difference with an inheritance which came of itself: In such a case the embryo acquires title. Rabha, however, said: Even in case an inheritance came by itself, the embryo does not acquire title; and the reason why title is not given to them who made a hazakah in the first instance is because they were still uncertain whether the property taken would remain with them, as there was still a doubt whether children were left. But in the second instance they were sure of their ground.

Come and hear another objection: "A child of one day inherits and bequeaths (*e.g.*, if his father dies when he was even one day old, he inherits from his father; and if at birth the estate of his deceased father came to him, and he dies when he was

one day old, his relatives inherit from him). We see, then—only when he was one day old, but not when in embryo. This was explained by Rabh Shesheth: He inherits the estate of his mother, to bequeath to his brothers on his father's side. And this can be only when he was alive one day after his mother; but not when he was in embryo, as he died before his mother. And a son does not inherit from his mother, when once in his grave, so that his brothers on his father's side could inherit from him.

Shall we assume that in case the mother dies while pregnant the embryo dies first? Perhaps she dies first? There happened such a case, and the embryo moved convulsively thrice. Said Mar b. R. Ashi: Such a movement was without any life, such as the movement of the tail of a lizard. Mar b. R. Joseph in the name of Rabha said: The cited Boraitha means to say that a child of one day diminishes the share of a first-born. *E.g.*, a first-born takes a double share—*i.e.*, twice as much as each of his other brothers. But if there were added a male child of one day, the estate must be divided into five parts, if there are four brothers, of which the first-born takes a double share. And if this child dies afterwards, his share is to be divided equally among the four brothers. This is only when he was old one day, but not when an embryo; because [it is written, Deut. xxi. 15], “and they *bear* him children.” As the same said also on the same authority: A son who was born after the death of his father does not diminish the share of the first-born, as it reads in the verse just cited “*bear him*”; but when born after his death, it was not born to him.

All that was said here was taught in the city of Sura. In Pumbeditha, however, it was taught as follows: Mar b. R. Joseph said in the name of Rabha: A first-born who was born after the death of his father does not take a double share. As it is written [ibid., 17]: “Shall he acknowledge,” and when he is dead he cannot acknowledge. The Halakha prevails in accordance with all the versions said by Mar b. R. Joseph in the name of Rabha.

R. Itz'hak in the name of R. Johanan said: He who bequeaths to an embryo, title is not acquired. And should you object to this statement from our Mishna, which states: “If one bequeaths a *mana* to the embryo, he takes it after he is born,”

I may tell you that this is said only of a father, whose mind is near to his son; but it cannot be done by a stranger. Said Samuel to R. Hana of Bagdad: You may bring to me ten persons, and I will teach in their presence that title is given if one bequeaths to an embryo. The Halakha, however, prevails that title is not given.

There was one who said to his wife: I bequeath my estate to the children who shall be born of you by me. And his elder son came and said: What becomes of me? And the father answered: You will take a share as one of the brothers. Now, the children which are to be born can certainly not acquire any title; but the question is, does the elder son, when he came to share with his brothers born thereafter, take a double share, as his father bequeathed to him a part of his estate when his brothers were not yet in existence? Or does he share with them equally? According to R. Abbin, R. Miicha, and R. Jeremiah, he *is* entitled to a double share; and according to R. Abuhu, Hanina b. Papi, and R. Itz'hak of Naf'ha, he is not. Said R. Abuhu to R. Jeremiah: With whom should the Halakha prevail—with us or with you? And he answered: Certainly with us, as we are older than you; and not with you, who are still young scholars. And R. Abuhu rejoined: Does this depend upon age? It depends upon reason, and our reason is better than yours. And what is it? questioned R. Jeremiah again. And he answered: Go to R. Abbin, and ask him, as I have already explained to him the reason at the college; and he shook his head in sign of assent. He went to him, and he told him: Because this case is similar to that of one who says: "You and this ass shall acquire title to this article," would title be given to him? Is this not to explain: You shall acquire title as the ass? The same is the case if one says: You shall share with the children, which are not yet in existence even in pregnancy. Hence title is not acquired in either case. It was taught: If one says: "Acquire title to this as the ass," certainly title is not given; but if he says: "Acquire title, you and the ass," according to R. Na'hman title is given to a half. And R. Huna said: This man said nothing. R. Shesheth, however, said: He has acquired title to the whole of it. Said R. Mordecai to R. Ashi: R. Ivia raised an objection from a Mishna in Tract Kiduchin: It happened with

five women, among them two sisters, that one presented to them a basket with dry figs, saying: You are all betrothed to me with this basket. And one of the women accepted the basket for them all. And when the case came before the sages, they said: The sisters are not betrothed. Hence—only the sisters? But the strangers were. Why? Is this not similar to the case: You and the ass shall acquire (*i.e.*, as the sisters could not under any circumstances be betrothed to one person, the other women must also be treated similarly)? And he answered: That is what R. Huna dreamt—that R. Ivia was going to raise a question (and now I see that R. Huna's dream was true). However, the objection does not hold good, as that Boraitha was explained: In case the man has added: All of you who are fit to be my wives.

There was one who said to his wife: My estate shall be for you and your children. And R. Joseph decided: One half of the estate belongs to her, and the other half to her children. And he added: I deduce my decision from the following Boraitha: Rabbi said: It is written [Lev. xxiv. 9]: "And it shall belong to Aaron and to his sons," meaning a half shall be for Aaron and a half for his sons. Said Abayi to him: What comparison is this? Aaron was fit to receive a share; and therefore the Merciful One mentioned him, that he should take a half. But in this case a woman is not fit to be an heir at all, when there are male children. Would it not be sufficient that she should take an equal share with her children? Is that so? Did not such a case happen in Nahardea, and Samuel collected for the woman a half; and also in Tiberias, and Johanan collected for her a half? Furthermore, when R. Itz'hak b. Joseph came from Palestine, he told: It happened that the government had taxed the citizens of the city and those who had real estate for the manufacture of a crown for the ruler, and Rabbi decided a half should be collected from the citizens, and the other from the owners of real estate. But what comparison is that with what was told by R. Itz'hak? As to that one, it is known that in previous orders from the government they applied only to the rich citizens, and those who possessed real estate only assisted them, with the consent of the government. But the order in question was written: Both the rich, and real-estate owners are taxed. Therefore Rabbi's decision.

R. Zera objected from the following: If one said: I intend to bring a meal-offering, of one hundred tenths of an ephah—to bring it in two vessels—he may bring sixty in one vessel and forty in the other. However, if he brought fifty and fifty, in two vessels, he has fulfilled his duty. We see, then, that only when he does so it is valid; but the law prescribes that he must bring sixty in one and forty in the other. Hence we see that equal halves is not to be understood when he says in two parts? Nay, this cannot be compared. We are witnesses that he intended to bring a great offering; and the expression “in two vessels” was because he was aware that it could not be put into one. Therefore there must be put in one vessel as much as it can contain, and the remainder in the other one.

(Says the Gemara:) The Halakha prevails in accordance with R. Joseph in the three cases: the case of a field, mentioned in the eighth chapter (p. 254), in the case of a sudarium mentioned in the preceding chapter (p. 253), and in this case of the half. There was one who had sent home pieces of silk, without any order to which member of his household they belonged, and R. Ami decided: Those which are fit for the sons, they shall use; and those which are fit for the daughters, shall be used by them. This law, however, holds good only in case he had no daughters-in-law; but if such a case should happen when there are daughters-in-law, and his own daughters are married, it is to be supposed that he sent them to the daughters-in-law. If, however, his own daughters were unmarried, he would not neglect his daughters, and it is to be supposed that he sent them for them.

There was one who said in his will: My *sons* shall inherit my estate. However, he had only one son, and some daughters. And the question arose: By the expression “sons” in the plural, does he mean the one son only, excluding the daughters, or does he mean to include them? Said Rabba: There is a verse in Num. xxvi. 8, “And the *sons* of Pallu: Eliab.” And R. Joseph said: There is another verse in I Chron. ii. 8, “And the *sons* of Ethan: Azaryah.” There was another, who said: “My estate shall belong to my sons,” and he had only one son and a grandson. And the question arose: Whether people are used to call grandsons also sons? R. Hbiba said:

They are. And Mar b. Ashi maintains: They are not. And there is a Boraitha in accordance with the latter, namely: If one vowed not to derive any benefit from his sons, he may derive it from the grandsons.

MISHNA III.: If one left grown-up and minor sons, and the former improved the estate, the improvement shall be divided equally. If, however, they said: "Observe in what condition the estate was left by our father, and it shall be known that we are going to improve it for our own sake," they have a right to take the benefit for themselves. The same is the case with a widow. If she had improved it without any remark, the improvement belongs to all the heirs. But if she remarked, "Seeing in what condition my husband left," etc., the benefit belongs to her.

GEMARA: Said R. Hbiba, son of R. Joseph b. Rabha in the name of his grandfather: The Mishna means to say that they have improved the estate, not at their own expense, but at that of the estate (*i.e.*, they went only to the trouble of hiring laborers for improving, but at the expense of the estate). But if they had expended from their own, then the benefit belongs to them without any remarks. Is that so? Did not R. Hanina say: If their father left them only covered wells (which are usually higher for watering fields), the improvement is for all? We see, then, that although the wells required much trouble to preserve them from pollution, and they should be always covered, the improvement is nevertheless for all? This case is different. It requires only that they shall be watched; and this can be done by minors also.

"*Observe in what condition,*" etc. R. Saphra's father left money, and R. Saphra took it for business purposes. His brothers summoned him before Rabha (demanding a share from the profits): Said Rabha to them: R. Saphra is a great man, and would not leave his study to trouble himself for the sake of others.

"*If she had improved it,*" etc. But what has a woman to do with the estate of orphans? (The law dictates as to whether she shall take what belongs to her according to her marriage contract, and depart; or shall take upon herself the trouble of the orphans, and be supported from the estate. But she has no right to any profit.) Said R. Jeremiah: It treats in case

the woman were an heir (*i.e.*, if the will reads: She shall share equally with the orphans).^{*} But if so, it is self-evident. Lest one say: As it is not usual for a woman to occupy herself with business, therefore it should be considered as she remarked—she is doing it for herself, it comes to teach us that it is not so.

“In what condition my husband left it,” etc. Is this not self-evident? Lest one say: Because of the pleasure she takes in thinking that people praise her for troubling herself for the orphans’ sake, she relinquishes the benefit in spite of her previous remark, it comes to teach us that it is not so.

R. Hanina said: If one has made the wedding of his son in one of his houses, the son acquires title to the house: provided the son was of age, married a virgin, and she was his first wife, and this wedding was the first of his house. It is certain that when the father has separated for this wedding a house with an attic, the son acquires title to the house, but not to the attic. But how is it if on the house was a balcony? or there were two houses, one inside of the other? Is title given to both, or only to that in which the wedding took place? These questions remain undecided. An objection was raised: If the father had separated for his son a house and furniture, the son acquires title to the furniture, but not to the house? This Boraitha treats of when the treasurer of his father was still in the house. So said R. Jeremiah. And the Nahardean said: Even when there was left his pigeon-coop. And both R. Jehudah and R. Papi said: It suffices if his father left there a vessel with roasted fish (*i.e.*, this shows that he has not relinquished his right to the house). Mar Zutra left his sandals in the wedding house which he separated for his son, and R. Ashi a bottle of oil (for the purpose said above). Said Mar Zutra: The following three things the rabbis enacted as laws,[†] without giving any reason: The case just mentioned; and that which was said above in the name of Samuel: If one has be-

^{*} The commentators Rashbam, Tospath, and Bach discuss at length how the widow is an heir also, illustrating, *e.g.*, if one has married the daughter of his brother, who has no other children besides her, and the brother has inherited the estate of their father, and thereafter both brothers die, then the widow of the one brother is also an heir to the estate of her grandfather, which belonged to her father, who had no heirs except her. There are also some other illustrations, but all are complicated. We give the last, which is simple.

[†] Gershom explains *Sinaitic* laws, with which Rashbam does not agree.

queathed all his estates to his wife, she is considered a guardian only; and also that which was said by Rabh. If A said to B: You owe me a mana, give it to C, and all the three were present, title is given to C.

MISHNA IV.: Brothers partners in business. If one of them was taken by the government to work for it, the damage caused by his absence, and also the profit for the business during that time, must be counted to the partnership. If, however, he becomes sick, and has to be cured, it is at his own expense.

GEMARA: The rabbis taught: If the government had appointed one of the brothers as a collector, or a military purveyor, if this was because of the duty of the house, it must be counted for all of them, but if it was because of his personal fitness, then it is for himself. Is this not self-evident, because the duty of the house must be counted for all? It treats of when he was a genius. Lest one say: In such a case it must not be counted for the house, because he was taken on account of his genius, it comes to teach us that it is not so.

The rabbis taught: If one of the brothers took two hundred zuz, to begin the study of the Torah, or to learn a trade, they may say to him: If you are with us, you have to be supported; but not otherwise. But why not support him, by deducting what his labor was worth to the house? This may be a support to R. Huna's statement, who said elsewhere: The blessing of the house increases when there are more people (*i.e.*, because the expenses of the house do not decrease when there is one person less). But, after all, let them support him even in his absence for the profits, owing to his share after deducting his labor and the expenses. Yea, this in reality they have to do.

"If, however, he becomes sick," etc. Rabbin sent a message in the name of R. Ilah: The Mishna means to say: In case he himself causes his sickness; but if he was occasionally sick, the cure must be at the expense of the house. What does it mean: "Caused by himself"? As R. Hanina says: All sickness comes from Providence, except cold. As it is written [Prov. xxii. 5]: "Thorns* and snares are in the way of the perverse man; he that doth guard his soul will keep far from them."

* The term in Hebrew is "zinim," and "zinha" means cold; and so it is taken by the Talmud. The basis of Leeser's translation is unknown.

MISHNA V.: If, while the father of the house was still alive, he sent through some of the brothers presents to weddings of his friends, and after his death some of the brothers married and the presents were returned to them by the same friends, it is to be counted to the income of the house; as the wedding presents may be replevined by the court. If, however, one presents to his friends pitchers of wine or oil, it is not to be replevined by the court, as this is reckoned a bestowing of favors only.

GEMARA: There is a contradiction from the following: "If the father sent, through one of his sons, a present to the wedding of his friend, and told him to remain there during the wedding, then, when this present returns to the son's wedding, it belongs to him only. If, however, a wedding present was sent to the father, the returning must be at the expense of the house." Hence we see that the son may preserve the returning present for himself; and this contradicts our Mishna. Said R. Assi in the name of R. Johanan: Our Mishna also treats: When the wedding present was first sent to the father. But does not the Mishna state: Through some of the brothers? Read *to* some of the brothers. But the Mishna states farther on: If it was returned? It means: If this came to be returned by the brothers, it must be returned at the expense of the house. R. Assi himself, however, said: It presents no difficulty (there is no necessity for such a complicated explanation of the Mishna, as it can be explained thus). Our Mishna treats: When the father sent the present through one of his sons, without designating that the returns should belong to him, then the returns belong to the house. And the Boraitha treats: When the father has nominated one of his sons to deliver the present, so that the returning should belong to him. Samuel, however, said: The law is to be practised in accordance with the Boraitha. And our Mishna treats: In case the son through whom the present was sent dies childless, and his brother came to marry his wife, who according to the law is also his heir. However, this present he does not inherit from him; because there is a rule that this brother does not inherit property which was not yet in the deceased's possession, but has to come to him in the future. (Says the Gemara:) From Samuel's statement is to be inferred that the one who has re-

ceived the present is obliged to return, even if the donator were dead. Why, then, let him say: Give me my friend who presented it to me, and I shall enjoy myself and give him a present, as he did to me. But as this cannot be, I am not obliged to anything. As we have learned in the following Boraitha: At those places where it is customary to return the presents which the bride has given to her groom at the time of betrothal, and she dies before marriage, they must be returned. At the place where it is not customary, they must not. And R. Joseph b. Abba in the name of Mar Uqba, quoting Samuel, said: Even at those places where it is customary to return, it is only in case the bride dies; but when the groom, it must not be returned, for the reason that she may say: Give me my husband, and I will enjoy myself with him, as for that purpose he gave them to me. Hence he may say also: Give me my friend, and I will enjoy with him. Said R. Joseph: It speaks of when his friend was at the wedding and had enjoyed himself with him all the seven days of the wedding, and the groom suddenly dies before the present was returned to him.

Shall we assume that in the above-mentioned claim of the bride, "Give me my husband," etc., the Tana'im of the following Boraitha differ: If one has betrothed a woman, and dies before marriage (and the marriage contract was already written), a virgin collects two hundred and a widow one hundred zuz. Concerning the presents given at the betrothal, however, it is to be practised as is customary at that place. So is the decree of R. Nathan. R. Jehudah the Prince, however, said: In reality, it was decided that in the place where it is customary to return, it must be returned; and where it is not customary it must not. Now does not R. Jehudah repeat what was said by the first Tana? It must then be assumed that the point of the difference is: If the bride may claim: "Give me my husband," etc., and the Boraitha is not complete and should read thus: If one betroths a woman, a virgin collects two hundred and a widow one hundred zuz, provided he has withdrawn from the contract. But if she dies, if it was in a place where it was customary to return, it must be done so; and if where it was not, it must not. But all this is in case she dies. But if he dies, there is to be no return, as she may claim: Give me my husband, etc. And to this R. Jehudah the Prince came to say:

Even in the latter case it must be done according to the custom of that place, as such a claim is not to be considered? Nay! All agree that the claim in question is to be considered; and there is no difference between them in case he dies. But in case she dies, they differ. And the point of their difference is: Whether the presents with which she was betrothed should be considered lost forever. According to R. Nathan, they are not so considered; and according to R. Jehudah, they are. But does not the Boraitha state that where it is customary to return, it must be so done? This means presents which were given by him aside from the betrothal. And the Tana'im of this Boraitha are in accordance with the Tana'im of the following: If one has betrothed his bride with a talent (a coin—according to some one hundred and twenty manas, and to others sixty, and according to Rashbam twenty-five), a virgin collects two hundred zuz besides the talent, and a widow one hundred. So is the decree of R. Meir. R. Jehudah, however, maintains: A virgin two hundred, and a widow one hundred of the talent; and the remainder must be returned. But R. Jose said: If he has betrothed her with twenty, he may give her thirty halves; and if with thirty, he may give her twenty halves. Let us see of what kind of case this Boraitha speaks. In case *she* dies, there is no longer any marriage contract; and if he dies, why should she return the remainder? Is it not said above that all agree that the betrothal money must not be returned, as the claim: "Give me my husband," etc., is to be considered? And if you should say: It speaks in case she had sinned; then if intentionally, has she still a right to her marriage contract? And if unintentionally, he may marry her if he be a commoner. It must be then said that it speaks of when the groom was a priest, and she was *forced* to sin (and in such a case a commoner may, and a priest may not marry her). And the point of their difference is, that R. Meir holds the money of betrothal to be lost forever, and R. Jehudah holds that it is not; and to R. Jose it was doubtful whether yes or no. And therefore he maintains that, according to the rule, doubtful money is to be divided. If he has betrothed her with twenty selas (eighty zuz), she has to return to him forty zuz. However, he has to complete the amount belonging to a widow as a marriage contract, which is one hundred zuz; therefore he gives her thirty half-selas, which

are sixty zuz, and this completes the mana to which she is entitled. And if he betrothed her with thirty selas, she has to return to him fifteen, and he must give her twenty half-selas more. Said R. Joseph b. Minumi in the name of R. Na'hman: Babylon is the place where it is customary to return. And by Babylon he meant the city of Nahardea. But how is it with the other cities in Babylon? Both Rabba and R. Joseph say: The betrothal money is not to be returned; but the presents are. Said R. Papa: The Halakha prevails, whether he or she dies, or he has retracted, the presents only are to be returned, but not the betrothal money. And in case *she* has retracted, the betrothal money also. Amimar, however, maintains that even in the latter case the money must not be returned, for the reason that one may say that he is then allowed to be betrothed to her sister (*i.e.*, if one should see the betrothal money returned, he might think the betrothal cancelled, and he might marry her sister, which is biblically prohibited so long as she is alive). But according to R. Ashi: This is not to be feared, as the divorce in her hands testifies that the betrothal was not cancelled. (Said the Gemara:) R. Ashi's statement is not to be taken into consideration at all; as one may be aware that she has returned the betrothal money, and not be aware that she took a divorce.

"May be replevined," etc. The rabbis taught: The following five things were said about wedding presents: (a) They may be collected by the court; (b) they are returned at the time when the donator marries; (c) they are not considered usurious (*i.e.*, if the return was of a greater value than presented); (d) the Sabbatic year does not release them; (e) a first-born has no double share in them. They are collected by the court, because they are considered a loan. They are not usurious, because they were not presented with this intention. The Sabbatic year does not release them, because the verse Deut. xv. 2 does not apply to them. And the first-born does not take a double share in them, because they are not as yet in existence, and he is not entitled to that which will be an inheritance in the future.

R. Kahana said: The following is the rule: If one came into the city, and heard that his comrade, who was at his wedding, marries, he must come and make a present. The same is the

case if he heard the voice of the drum which announced the marriage of his comrade; but if it was not drummed, the groom ought to let him know. However, if he failed to do so, although he may be away, he nevertheless must pay. In such a case, however, he may deduct for the meal of which he has not partaken. And how much may he deduct? Said Abayi: The inhabitants of the city of Ganna used to deduct one zuz. However, this depends upon the value at which one would appraise the respect and honor of attendance at the wedding banquet. The rabbis taught: If one has married publicly, and thereafter, by returning the presents, he wishes to be married privately, he has a right to say: As you did with me publicly, I will do with you; but not when privately. The same is the case if one has married a virgin, and the other marries a widow; or, if one has married a second wife, and his comrade marries his first wife, the former may say: As you have done with me, I will do with you. The same is the case if to him it was done once, and his comrade demands from him he shall do twice.

The rabbis taught: Who is like unto a wealthy man who is known to be rich by his many cattle and estates? The one who is a master in Haggadah (as he lectures everywhere, and becomes known to all). Who is like unto a broker who does business at his home only and is not well known to the community? The one who occupies himself with pilpulistic (dialectology, one who is a master in dialectics). Who is like unto one who makes his living by selling things which are to be measured—who gathers his money little by little, which finally becomes a considerable amount? The one who gathers the decisions of the rabbis, little by little, and finally possesses a great deal of wisdom. However, all are dependent to the owner of wheat, which is the Gemara, as only by the studying of it are we able to understand the Mishnayoth and the Boraithas.

R. Zera in the name of Rabh said: It is written [Prov. xv. 15]: "All the days of the afflicted are evil." It means: The masters of Gemara (because they must find out how to decide the laws from the Mishnayoth, which always need an explanation). "But he that is of a cheerful heart," etc., means: the one who is a master in Mishnayoth. Rabba, however, maintains the reverse. He who is a master in Mishnayoth cannot come to any conclusion about Halakha; but he who is a master in

Gemara knows how to decide Halakhas. And this is what R. Mesharshia said in his name: It is written [Eccl. x. 9]: "He that moves stones will be hurt through them," meaning the masters of the Mishna. "He that cleaveth wood will be endangered thereby," means the masters of Gemara (because they do not always succeed in finding out the correct decisions). R. Hanina said: "All the days of the afflicted," etc., means him who has a bad wife. "But he who is of a cheerful heart," etc., means him who has a good wife. R. Janai said: "All the days of the afflicted," etc., means one who is effeminate. "And he that is of a cheerful heart," etc., means him who is hardened to the ways of the world. R. Johanan said: By the first is meant him whose nature is merciful, and who takes to heart everything which happens to his fellow-men; and by the second is meant him who is callous. R. Jehoshua b. Levi said: The first means him who is a pedant; and the second, him whose mind is worldly.*

MISHNA VI.: If one sends presents to the house of his betrothed's father, to the value of one hundred manas, and has partaken of the betrothal meal, even for one dinar, they are not to be returned. If, however, he did not partake, they may be returned in case of retraction. If the presents were given for the purpose that the bride should bring them, after her marriage, to her husband's house, they are to be returned. But if such is to be used while she is yet in her father's house, they are not.

GEMARA: Said Rabha: It means if he has partaken of no less than the value of a dinar; but if less, he has a right to demand a return. Is this not self-evident? The Mishna states a dinar? Lest one say this statement is only general, but not particular, he came to say that this is to be taken literally. Here in the Mishna it is eating. But how is it if he drank, or his substitute had partaken? Also, how is it if they had sent to him? Come and hear. R. Jehudah in the name of Samuel said: It happened with one who had sent to his betrothed's father one hundred *carrums* containing pitchers of wine and oil, and vessels of silver and gold, and silk garments; and while he was joyful over the act, he rode on his horse to the gate of

* The second explanation to this verse by the same authority will be in Chapter XI. of Tract Sanhedrin as the proper place.

his betrothed's father, where they gave him a goblet of a warm beverage which he drank while sitting on the horse. Thereafter he died before marriage. And R. Aha, the mayor of that city, brought this case up before the sages in the college of Usha, and they decided: Such presents as may become spoiled before marriage are not to be returned, but such as are in good condition may. Hence we see even if one has not eaten, but drunk, it is the same. Infer from this also that the value of what he had drunk was less than a dinar (as a goblet of warm beverage cannot amount to a dinar). Said R. Ashi: Who can assure us that the goblet to which they treated him was not worth a thousand zuz, as perhaps they had ground a pearl* of that value in the goblet? But infer from this that if they had sent to his house, it is the same as if he had partaken of it at the house of his betrothed's father? Nay! Perhaps at the gate of his betrothed's father is the same as if he had partaken of it *inside* the house. The schoolmen questioned: How is it when the presents have improved—*e.g.*, if he had made presents in cattle and they brought offspring? Shall we say, because they have to be returned to him, they are to be considered under his control, and belong to him; or, because if they should be lost, payment for them would be demanded, they are considered under the control of his betrothed's father? This question remains undecided.

Rabha questioned: The presents which are usually spoiled during the time from the betrothal to marriage—how is it if they were in good condition; must they be returned, or not? Come and hear the Boraitha cited above: "R. Aha, the mayor of that city, brought the matter up before the sages of Usha, who decided: If they are liable to be spoiled, they are not to be returned." Does it not mean although they are in good condition? Nay, it may mean if they *were* spoiled. Come, then, and hear the last part of our Mishna: "But if they be used while she is yet in her father's house they are not?" This was explained by Rabha to be nets and veils. R. Jehudah in the name of Rabh said: It happened with one who sent to the house of his betrothed's father, wine, oil, and garments of flax; all of them new of that year at the time of Pentecost.

* In ancient times they used to grind pearls and diamonds in medicine.

But what news came he to tell us? If you wish, he tells us the great value of the land of Israel; and if you wish, it may be said that he came to teach us: If one claims that he had done so at such a time, his claim is to be considered. The same said again in the name of the same authority: It happened with one, that he was told that his betrothed wife could not smell. He went after her into a ruined building to test her, and said: I perceive a smell of radishes (*i.e.*, he kept in his pockets some for the purpose of testing her, whether she would smell them), and she answered him sarcastically: If one should furnish me with the dates of Jerichio, I would eat them with the radishes I smell. Thereupon the ruined building fell and she died. And the sages decided: Because her husband entered the ruin only for the purpose of testing, he has no right to inherit from her.

"But if they be used while in her father's house," etc. Rabbin the elder was sitting before R. Papa and said: This is only in case death occurred to one of them; but if *he* had retracted, the presents are to be returned, but not what he had expended for the banquets. If, however, *she* had retracted, even the value of a bundle of herbs is to be returned. Said R. Huna b. R. Jehoshua: The value of the meat used at the banquets must be appraised at the cheapest price. How cheap should it be? A third of the existing price.

MISHNA VII.: If a sick person had bequeathed all his estates to strangers, leaving some ground for himself, his gift is considered valid. If, however, he left nothing, it is invalid.

GEMARA: Who is the Tana who holds that we may act in accordance with the supposed intention of the bequeather (as the Mishna states, "If he left nothing for himself it is invalid," which means, if the sick person becomes cured, he may retract: because if he could know that he would remain alive, he would not do so)? Said R. Na'hman: It is according to Simeon b. Menasia of the previous chapter (p. 291). R. She-sheth, however, maintains: This is in accordance with R. Simeon of Shizuri of Tract Gittin (Chapter VI., Mishna 6), who said: Also who is dangerously sick. Who is the Tana of what the rabbis taught in the following Tosephtha: If one was sick in bed, and he was questioned to whom he bequeathed his estates, and he said: "I thought that I had a son, but now that I am

convinced I have not, I bequeath my estates to so and so"; or, "I thought that my wife was pregnant, but now that I know she is not, I bequeath them to so and so"; and thereafter it became known that he left a son, or that his wife was pregnant, this bequeathing counts nothing—shall we assume that it is in accordance with R. Simeon b. Menasia and not with the rabbis? Nay! It may be even in accordance with the rabbis, as when he said: "I thought," etc., it is different. Why was it supposed previously that this should not be in accordance with the rabbis? Lest one say that the sick person said it only to mention his sorrow, but he did not think that it should not be bequeathed if he did have a son, it comes to teach us that it is not so. R. Zera in the name of Rabh said: Whence do we deduce that a gift of a sick person must be *biblically* considered? Because it is written [Num. xxvii. 8]: "Then shall he cause to pass unto his daughter" (*i.e.*, it should be written as elsewhere: You shall give the estates), it comes to teach that there is another case which we have to pass, and this is the gift of a sick person. R. Na'hman in the name of Rabba b. Abuhu, however, maintains from [ibid., verse 9]: "Shall ye give his inheritance unto his brothers" (which is also superfluous, as it should read: If no daughter, then to the brothers), which teaches that there is another gift which is to be considered valid, and that is, of a sick person. R. Menasia b. Jeremiah said: It is deduced from [II Kings, xx. 1]: "Give thy charge to thy house," etc., from which we see that concerning a sick person it is sufficient when he charges without any writing. And Rami b. Ezekiel said: From the following [II Samuel, xvii. 23]: "And Achithophel . . . and gave his charge to his household," etc., we see that charging is sufficient without any writing.

The rabbis taught: The following three things has Achithophel charged his sons: You shall not quarrel with each other; you shall not rebel against the kingdom of David; and if the Day of Pentecost be a clear one, you may begin to sow wheat. Mar Zutra, however, said: It was taught that he said: If it should be cloudy. Nahardeans said in the name of R. Jacob: Not exactly clear, and not exactly cloudy; as, if it should be a little cloudy, with a north wind blowing, it is also considered clear. Said R. Abba to R. Ashi: We, however, do not rely

upon the cited Boraitha, but on what is said by R. Itz'hak b. Abdimi in Tract Yoma (p. 29, lines 14, 15, etc.).

[There is a Boraitha by Abba Shaul: If the Day of Pentecost be clear, it is a good sign for the whole year. R. Zebid said: If the first day of the new year is a warm one, the whole year will be warm; and if cold, the whole year will be so. And to what purpose was it said? Concerning the prayer of the high priest on the Day of Atonement (that he should pray accordingly).] Rabha, however, in the name of R. Na'hman said: The gift of a sick person is rabbinical. And it was so enacted that a sick person should not become exhausted, being aware that, because he is sick and cannot write down or sign his will, he can do nothing with his property. But did, indeed, R. Na'hman say so? Did he not say: Although Samuel decided: If one sold a promissory note to his neighbor, and thereafter relinquished his right in it, his act is valid; and even his heir may do so? He (Samuel) nevertheless admits that if he gave this note to some one as a gift, he has no longer right to relinquish his debt, even if he becomes cured. Now, this would be correct if the gift of a sick person were biblical; but if it is rabbinical, why should he not be able to relinquish it when cured? It is true it is not biblical, but the rabbis have enacted that this law should be equal to a biblical one.

Rabha in the name of R. Na'hman said: If a sick person said: "A shall reside in such a house," or, "B shall consume the products of such and such a tree," he said nothing, unless he said: "Give such and such a house to A, that he may reside there"; "Give such and such a tree to B, and he shall consume its products." Is it meant to say that R. Na'hman holds that a sick person who verbally wills has no more right than one who is in good health—*i.e.*, if one who is in good health should say: "He shall reside there," it would not be considered a gift even if it were done with the ceremony of a sudarium; then it would contradict another saying of Rabha's in the name of R. Na'hman: If a sick person said: "The loan made by me to A shall be given to B," he is to be listened to, which is not the case with one in good health, as title cannot be given to a loan which is made with the intention that the borrower shall expend it. (Hence we see that a sick person has more right than one in good health.) Said R. Papa: The reason of this law is,

because an heir inherits it, it is considered as if it were under the control of the borrower. And farther on it is said that the gift of a sick person is considered as an inheritance. R. Aha b. R. Aiqua, however, said: To transfer a loan is lawful, even for him who is in good health in case it were made in the presence of all three, as is said above by R. Huna.

The schoolmen propounded a question: If the sick person bequeaths a tree to A and the products of it to B, should it be considered as if he reserved it for himself, in such a case it being said above that he cannot retract when cured, or is it not so considered? And should you decide that it is not so considered when he bequeaths the products to another, how is it if he said: I bequeath the tree to A, except the products. Is this considered as if he reserved some of the ground for himself, or not? Said Rabha in the name of R. Na'hman: Even if it should be decided, the products to another, it cannot be counted that he reserved some of the ground for himself, it is to be counted as if he left the products to himself, for the reason that if one left to himself, he does it with a good eye. Said R. Abba to R. Ashi: We taught R. Na'hman's statement as to what was said above (p. 153) by Resh Lakish concerning a house and an attic; and in accordance with R. Zebid's explanation there.

R. Joseph b. Minumi in the name of R. Na'hman said: A sick person who has bequeathed all of his estates to strangers, it must be investigated how was the case (*i.e.*, if he had divided them at one time). *E.g.*, of my property such and such shall belong to A, and such and such to B, etc.—as he could not do otherwise if he had made up his mind to divide his estates in such a manner as if he were to die of his sickness, so the last ones are not considered as if he would reserve some of his estates for himself—all of them acquire title after his death. But in case of cure he may retract from all of them, even from the first, but if he so does after deliberating (*i.e.*, “Such and such shall be to A,” then stops, and some time thereafter adds: “Such and such to B,” etc.), in case he was cured of this sickness he may retract only from the last one, as he left nothing for himself—for it is to be supposed that if he knew he would be cured he would not give away the last of his estate so that he should remain a beggar—but not from the previous one.

But why should not we suppose, even in the latter case, that his intention was concerning all of them, in case he should die, and the deliberation was as to who was more worthy to be his inheritor? Usually a sick person who expects to die makes up his mind for all his estates before he mentions any name.

R. Aha b. Minumi in the name of R. Na'hman said: If a sick person has bequeathed all his estates to strangers, and thereafter is cured, he cannot retract, as it may be feared, perhaps, he has estates in another country. But does not our Mishna state: In case he left nothing for himself, he may? And according to this theory, how can such a case occur? Said R. Hama: It may occur, if he said: *All* my estates, wherever they may be found. Mar b. R. Ashi said: Our Mishna means to say: In case it was clear to the people that he had no estates elsewhere.

The schoolmen propounded a question: Should a retraction in part be considered a retraction of all, or not (*c.g.*, if he first bequeaths all his estates to A, and thereafter he bequeaths a part of same to B, which, according to the law, he may do, the question arises whether A has still the right to what was bequeathed to him at first, or the retraction of a part annuls the first entirely)? Come and hear: "If one bequeaths all his estates to A, and thereafter a part of them to B, B acquires title, but A does not." Is it not to be assumed that it means in case he dies? Nay! It means in case he was cured. And so it seems to be from the latter part stated in the same Boraitha: "If he wrote, 'A part of my estate shall belong to A and all the remainder to B,' the latter acquires title, but not the first." And this statement is correct in case he was cured; as then, bequeathing all the remainder to B, he reserved nothing for himself; but if it speaks in case he dies, why should both of them not acquire title? Said R. Yemar to R. Ashi: The same might be said even when he was cured. If you decide that a retraction in part is considered a retraction to all, it is correct that title is given to B, as the first bequeathing to A is entirely annulled with that which he has separated from it to B. But if you should decide that a retraction in part does not annul the first, let this case be considered as the case of "dividing" mentioned above, and title should not be given to any of them.

The Halakha, however, prevails: "That a retraction in part

is considered entirely." And the first case mentioned in the just cited Boraitha holds good for both, whether he dies or is cured; and the latter case holds good only when he was cured.

R. Shesheth said: The expressions, "He shall take," "shall be rewarded," "shall make a hazakah," and "shall acquire title" are to be considered a *gift*, from which he has no right to retract. A Boraitha adds: "Also the expression 'shall inherit,' to him who is fit to be his direct heir." And it is in accordance with Johanan b. Beroka.

The schoolmen questioned: How shall it be done, if he expresses himself: A is the one who shall derive benefit from my estates? Does he mean all of them shall belong to him, or that he shall derive *some* benefit from them, but not all? This remains undecided. The same propounded another question: How is it if he had sold all his estates while he was sick—may he retract when cured, or not? And in answering this question, at one time it was said by R. Jehudah in the name of Rabh: He may retract; and at another time it was said by the same in the name of the same authority: He may not. However, they do not contradict each other, as the first decision holds good in case the money obtained was still in his hands, and the second applies in case the seller had expended it by paying his debts.

The schoolmen propounded another question: If a sick person has confessed, "I owe so much to so and so," shall it be taken for granted, and his creditors acquire title to the cash or estates left; or, probably, that he said this for the purpose that, should he be cured, his children should not think that he was rich, and therefore the man whom he mentioned in his confession takes nothing? Come and hear: Aisur, the proselyte, had thirteen thousand zuz with Rabha. R. Mari was his son (whose mother Rachel, daughter of Samuel, who was in captivity, was pregnant with him from the same Aisur when he was still a heathen before marriage, and although he was born after the father had embraced Judaism, according to the law he was not considered his son concerning inheritance, and also must not be named after him, therefore Mari was named Mari b. Rachel, after his mother). Said Rabha: I do not see any lawful case which could make R. Mari inherit the money deposited with me. By inheritance he cannot, as, according to the law, he is not considered an heir. Should his father while sick make

it a gift to him, there is a rule that he who can be an heir is fit to receive the gift, but not he who is not fit to be an heir. There is also a rule that to coins title cannot be given by exchange; and if his father would present him with real estate, which is lawful, his father does not possess it; and if by transferring them from me to him in the presence of all three of us, then certainly, if he would send after me, I would not listen. Which R. Aiqua b. R. Ami opposed, saying: Why, then, let Aisur confess that the money in question belongs to Mari, and with his confession title would be given to him. While so discussing, Aisur got wind of it, and confessed. Rabha became angry, saying: They are instructing people how to make their claims good and do harm to me.

"Reserving some ground for himself," etc. But what is meant by this? Said R. Jehudah in the name of Rabh: It means real estate, or ground by which his livelihood is assured. And R. Jeremiah b. Abba maintains: The same is the case when he left movable property. Said R. Zera: See how the decisions of our elders correspond. Why is it said real estate? Because it is supposed that a sick person would think, "If I should be cured, I shall get my livelihood from this estate." The same is the case if he left movable property; he relies upon it. R. Joseph, however, opposed: I do not see such a correspondence at all. He who says "movable property" does not correspond with our Mishna, which states plainly, "ground" (real estate); and he who said "to be sufficient for his livelihood" also does not correspond with it, which states "some real estate," which cannot be explained that it should suffice for a livelihood. Said Abayi to him: Does the Mishna mean in each case when it mentions ground, that it is not changeable for movable property? Did not R. Dimi b. Joseph say in the name of R. Elazar, referring to a Mishna in Tract Gittin, in which also some ground is mentioned: Movable property is also considered a remainder in that case? There it is different. It should not state "ground" at all; but because it begins with the law of Peah, which applies to ground no matter how small it is, etc., it uses the same expression at the end. But in reality there is a difference between real estate and movable property. It was also questioned: Is this a rule—that wherever the expression, a trifle, is mentioned

in the Mishna, it does not mean a certain quantity? Is there not a Mishna in Chulin: "If five sheep give some wool, the law of the first shearing applies to it"? and to the question: What does "some wool" mean? said Rabha: No less than a litra and a half, etc. Hence we see the expression "some" means a certain quantity? There also it should not state "some wool"; but because in the beginning it states: If each sheep gives a litra and a half, it expresses in the latter case "some wool," as the quantity from every five sheep is only one litra and a half.

It is certain that if one says, "I bequeath my movable property to so and so," he acquires title to all vessels or garments which are useful, except wheat and barley. And if he says, "*All* my movable property," wheat and barley are also included; and even the grinder of a handmill, but not the grindstone. And if he says, "All that is movable," even the latter is included. But the question arises: If among his properties were also bondsmen, is title given to them also, as they are also considered movable property; or are slaves under the category of real estate and title is not given?

Said R. Aha b. R. Ashi to R. Ivia: Come and hear Mishna 7 in Chapter IV. of this tract, which states: If he said, "I sell the town, with all its contents," slaves are included. From which it is to be inferred that slaves are considered movable property; as if they were considered real estate they ought to be included, even if he did not mention "with all its contents." But can you infer from it that they are considered movable property? Does not the Mishna express itself "even bondsmen"; and if they should be considered movable property, why "even"? We must then say that there is a difference between movable property which must be carried and that which is self-moving. The same answer can also apply to the theory that slaves are considered real estate. (See previous vol., p. 59.)

Rabha in the name of R. Na'hman said: In five cases the act of a gift is not considered unless the bequeather writes "all my estates," and they are: A sick person, his bondsmen, his wife, his children, and the estates of a woman who has bequeathed them to some one for the purpose that her future husband should not demand them at the marriage. "A sick

person"—as our Mishna states: If he reserved nothing for himself, the bequeathing is not considered. "A slave"—as there is a Mishna which states: If one has bequeathed all of his estates to a slave, the latter becomes free. If, however, he reserved some for himself, he does not. "His wife"—as is said above: If one bequeaths all his estate to his wife, it is considered that he has appointed her as a guardian only. "To his children"—as stated above: If one bequeaths all his estate to his children, but reserves for his wife some ground, she loses the right of her marriage contract. "And the estate of a woman who desires to hide it from her future husband"—as the Master said elsewhere: In such a case she must write *all* her estates, as only then she may retract after her marriage. But if she reserved something for herself, she loses the right. And in all those cases where they reserved for themselves movable property, their acts were invalid, except in the case of a marriage contract, to which the enactment of the rabbis was made for real estate only. Amimar, however, maintains: If the movable property in question was mentioned in the marriage contract, and while bequeathing all his estate to his children he reserved it for himself, it is considered, and his wife does not lose her right in the marriage contract.

If A bequeaths his estates to B, and among them were slaves, they are included, as they are also called estate, as said above. Earth is considered estate, as there is a Mishna: Estates which one can rely upon can be acquired with money, with a bill of sale, and with hazakah. Garments are also considered estate, as the same Mishna adds: And to that which cannot be relied upon, title is given only by drawing. Coins are also considered estate, from the same Mishna, which adds: Such estates which cannot be relied upon may be obtained with that which may be relied upon.* [Here is repeated from Baba Kama (p. 236) what happened to R. Papa when he had to collect twelve thousand zuz, as evidence that coins are considered estate.] Deeds are also considered estate. As Rabba b. Itz'hak said: There are two kinds of deeds. If one said to witnesses: "Give title of this field to so and so by a ceremony of a sudarium, and

* In the Talmud, wherever it means real estate, the expression is estates which one can rely upon—which means that if they are mortgaged for a loan the lender may rely upon them, as they cannot be lost by fire, etc.

write him a deed, he may retract as to the deed," but he cannot retract as to the field itself, as title was already given. But if he said: "Give title," etc., with the stipulation, "You shall write him a deed also," he may retract from both. And R. Hyya b. Abbin in the name of R. Huna said: There are three kinds of deeds: the two just mentioned; and the third, if the seller hastened and wrote the deed. As is said above: If the seller desire to write a bill of sale, he may do so even in the absence of the buyer; as after the buyer makes a hazakah on the estate, title is given to the deed wherever it may be found. As we have learned: Estates which cannot be relied upon are obtained with that which is to be relied upon, etc. (We see, then, that deeds are considered estate.) Cattle are also so considered, as we have learned (Tract Shekalim, Chapter IV., Mishna g): "If one devote his possessions, and there are among them cattle fit for the altar, male or female," etc. Fowl are also so considered, as we have learned [ibid., h]: "If one devote his possessions, and among them . . . oils and birds," etc. Tephilin are also so considered, as we have learned: "If one devote his estates, among which tephilin were found, they must be left for him."

The schoolmen propounded a question: How is the case with the Holy Scrolls—as they must not be sold, are they considered estate or not? This remains undecided. The mother of R. Zutra b. Tubhia had transferred to Zutra her estates because she was about to marry R. Zebid. However, after marriage, Zebid divorced her. Then she came before R. Bibi b. Abayi, claiming that she retracted from her transfer, as she told R. Zutra plainly that only for the purpose of marriage had she transferred her estates to him. But he said: You transferred them on account of marriage, and you did marry. Said R. Huna b. R. Jehoshua: Because you are weak you speak weak words (see above, p. 306). Even according to him who said: "If she wishes to hide her estates from her future husband, title is given," it is only in case she does it without any remark; but in this case she said plainly to her son that she did it because of marriage. But now she is divorced.

The mother of Rami b. Hama bequeathed to him her estates on one evening, and in the morning she bequeathed them to her son R. Uqba. Rami then went to R. Shesheth,

who turned over the estates to him. And R. Uqba went to R. Na'hman's court, and he decided that the estates belonged to him (Uqba). R. Shesheth then went to R. Na'hman and questioned him: Why such a decision? If it is because she retracted from the first, this would hold good only should she be cured; but she was dead from this sickness, and her first will ought to be listened to? And he answered: So said Samuel: In such a case where a retraction holds good in case of a cure, it is the same if the retraction was made while still sick. Rejoined R. Shesheth: Samuel said so in case he has retracted and reserved the estates for himself? But did he say also that he might bequeath to another? And R. Na'hman answered: Yea! Samuel said plainly: One may do so, whether for himself or for another.

The mother of R. Amram the Pious possessed a bundle of deeds, and while dying she said: They shall be given to my son Amram. His brothers, however, came to complain before R. Na'hman, claiming that Amram had not made any drawing on the deeds; consequently he had not yet acquired title to them. To which R. Na'hman answered: The words of a dying person are considered as if written and delivered.

The sister of R. Tubi b. Matna bequeathed her estates to him on one morning, and in the evening came R. Ahadbui, who cried before her, claiming that people would say: The one brother is a scholar and the other not, and she has bequeathed to him. When the case came before R. Na'hman, he decided as he said above in Samuel's name, that the retraction held good. The sister of R. Dimi b. Joseph owned a part of a vineyard; and every time she became sick, she used to present it to him, and when cured to retract. At one time she became sick and sent to him: Come and acquire title to my estates. And he answered: I do not want them. She, however, sent again to him: Come and acquire title to them, so that, according to the law, I shall not be able to retract. He then went, reserved a part thereof for her, and then the ceremony of a sudarium was made. She again became cured, and again retracted, and came to R. Na'hman requesting that he should return to her her estates. And R. Na'hman summoned R. Dimi before the court. But he was not willing to listen, saying: To what purpose shall I go? All that was done was in

accordance with the law. She reserved of the estates for herself in case she should be cured, etc. He then sent to him: If you will not appear before the court, I shall prick you so that blood will not run (*i.e.*, put him under the ban). Then R. Na'hman examined the witnesses how was the case. And they said: The woman said thus: "Woe is me! I am dying," and then she said her will. To which R. Na'hman gave his decision: In such a case it is considered that she made the will because she was afraid she would die; and a will made in the fear of death may be retracted.

It was taught: Concerning a gift in part of a sick person, it was said before Rabha, in the name of Mar Zutra the son of R. Na'hman, who said in the name of his father: In one respect it is equal to a gift by one in good health; it means he cannot retract if cured; and in the other to a will of a sick person, as it needs not the ceremony of a sudarium. Said Rabha to them: I told you several times, "Do not put a clay-pot (see Chapter I., p. 14) on the neck of R. Na'hman." R. Na'hman said thus: It is considered a gift of one in good health and must be done with the ceremony of a sudarium. Rabha, however, objected to R. Na'hman from our Mishna, which states: If he reserved some ground for himself the gift is valid. Is it not to be assumed that no sudarium is needed? And he answered: Nay! It must be done with the ceremony of a sudarium. But does not the latter part state: If he reserved nothing, title is not given? And if it is as you say, why should it not be the same when made by a sudarium? And he answered: So said Samuel: If a sick person has bequeathed all his estates to strangers, although made with a sudarium, he may retract, because it is certain he made it in the fear of death. R. Mesharshia objected to Rabha from the following: It happened with the mother of Rukhl's sons that while sick she said: My jewelry shall be given to my daughter, and is worth twelve manas. And she died; and the sages listened to her will. (Hence we see that, although it was a part of her estate, and it was not made with the ceremony of a sudarium, it was nevertheless considered.) The case was, because she had mentioned: I am certain I shall die, therefore I bequeath this to my daughter. R. Huna b. R. Jehoshua, however, said: If the sick person has commanded while dying, a sudarium is needed; and all Bo-

raithas cited treat when the sick person has divided all his estates among different persons. And in such a case it is said above that the rabbis consider them as a gift of a sick person. The Halakha, however, prevails that for a gift of a sick person in part a sudarium is needed, even when he dies of that sickness; but if he commanded while dying, no sudarium is needed in case he dies. But if he was cured he may retract, even if it was done with a sudarium.

It was taught: A gift of a sick person, in which it was written that it was made with a sudarium—it is considered based upon two sources, and must be listened to. So declared the school of Rabh in the name of their master. Samuel, however, said: I do not know what should be done in such a case. The reason of the school of Rabh is: Because the will was made on two bases, it is equal to both—a gift of one in good health, from which he cannot retract, and to a gift of a sick person who said, “The loan I have with A, shall be given to B.” And the reason of Samuel, who was doubtful in such a case, is: Perhaps the sick person made up his mind not to give title without a deed, and such cannot be written after death.

However, there is a contradiction from the following statement of Rabh’s, to his one decision just mentioned, and the same is it with Samuel—namely: The message which Rabbin sent in the name of R. Abuhu (above, pp. 300-1), in which both Rabh and Samuel contradict themselves? Nay! There is no contradiction at all. Rabh it does not contradict, because in one case he speaks where it was made with a ceremony of a sudarium, and in the other where it was not. And to Samuel also there is no contradiction, as his decision in the case cited speaks when the sudarium was made to strengthen the act. (This will be explained farther on.)

R. Na’hman b. Itz’hak was sitting behind Rabha, and Rabha before R. Na’hman, who questioned him: Did Samuel indeed say that it is to be feared the sick person had perhaps made up his mind to give title by a deed only? Did not R. Jehudah say in his name: A sick person who has bequeathed all his estates to strangers, although made with a sudarium, if he was cured he may retract? Because it is known that this bequest was only because he thought he would die. R. Na’hman gestured, and Rabha remained silent. After R. Na’hman went out,

questioned R. Na'hman b. Itz'hak: Rabha, what does R. Na'hman mean by his gesture? And he answered: He means that title is given when the act was strengthened. And to the question: How is it known that the act was strengthened? Said R. Hisda: If it was written: "In addition to his gift the ceremony of a sudarium was made."

It is certain that if one bequeathed first to one, and thereafter to another, it is as R. Dimi said above: The later will abolish the first. But how is it if he wrote and gave title with a sudarium to one, and thereafter he did the same to another? According to Rabh: Title is given to the first, as in his opinion it is similar to a gift by one who is in good health. But according to Samuel title is given to the second, as in his opinion it is similar to a gift of a sick person, and it is to be feared that he had perhaps made up his mind to give title only by a deed. So it was taught in the city of Sura. In Pumbeditha, however, it was taught as follows: R. Jereniah b. Abba said: A message was sent from the college to Samuel: Let the master teach us—how is the law if one has bequeathed his estate to strangers with a sudarium? And his answer was: After a sudarium, nothing can be done. The schoolmen, however, understood that Samuel's decision was only if it was bequeathed to another; but if he became cured and wished to retract for the sake of himself, he might do so. Said R. Hisda to them: When R. Huna came from Khuphry, he explained that Samuel meant to say it holds good in any event (*i.e.*, he cannot retract even for himself). There was one who bequeathed his estates with a sudarium while he was sick, and thereafter became cured and wanted to retract, and brought up his case in the court of R. Huna. And R. Huna said to him: "I can do nothing for you, as you acted not in accordance with those who wish to retract after cure. They usually give title with one of the two—a document or a sudarium. You, however, have done both; and such an act can by no means be abolished." There was a deed of gift in which it was written: While I live and after my death. Rabh considered this as a will upon death, because death was mentioned. And Samuel considered it as a gift by one in good health, because while "I live" was mentioned—explaining that the word death is to be interpreted from time everlasting. Said Uhla: The

sages of Nahardea decided: The Halakha prevails with Rabh. Said Rabha: If, however, it was written: "While I *still* live," title is given. And Amimar said: The Halakha does not prevail with Rabha. Said R. Ashi to him: Is this not self-evident? Have not the Nahardeans decided: The Halakha prevails with Rabh? (And he rejoined:) One might say: When "*still* alive." Rabh also admits: I came to say that it is not so. There was such a case, which came before R. Na'hman in the city of Nahardea, and he sent the plaintiff to R. Jeremiah b. Abba in the city of Shum-Tamia, saying: Nahardea is the city of Samuel, and we cannot act against him, though the Halakha prevails with Rabh. There was also such a case which came before Rabha, and he decided in accordance with his own theory. And the plaintiff was a woman, who troubled him very much, saying: His decision was not in accordance with the law. He said then to R. Papa b. R. Hanon, who was his scribe: Write her a document that she won the case; but at the bottom write a few words from a Mishna in Middle Gate: "He may hire other laborers or deceive them" (that the court to which she shall bring my judgment will understand that I do not agree with it). And she exclaimed: I see you desire to fool me—may your ship sink! Rabha's followers dipped his clothes in water, to overcome the curse of the woman. However, they did not succeed, as Rabha was punished for this.

MISHNA VIII.: If in the deed it was not mentioned that he was sick, and he claims that he was sick at the time of writing and had a right to retract, while the plaintiff claims that he was in good health, it is for him to bring evidence that he was sick. So is the decree of R. Meir. The sages, however, say: There is a rule that it is always for the plaintiff to bring evidence.

GEMARA: There was a deed of gift in which it was written that it was done while he was sick in bed; but it was not mentioned that he died from that sickness. And Rabha said: It does not matter, as in reality he did die, and his grave is evidence. Said Abayi to him: But what evidence is this that he died from that sickness? Perhaps he was then cured, retracted, and thereafter died of another sickness? And that this is to be feared we may infer from a ship which sinks, when it is seldom that the men on board are saved. And, nevertheless, we apply

to such a case both the rigorous law concerning life and the rigorous law concerning death (*i.e.*, the wives of those who were on board are not allowed to marry, as perhaps their husbands are not dead, but have drifted to the shore at another place and remain alive, and also must not partake of Terumah in case their husbands were priests, as perhaps they are dead). So much the more in our case, in which the majority of sick persons become cured. Should we not fear that, because it was not mentioned in the deed that he died from that sickness, he was cured?

Said R. Huna b. R. Jehoshua: The decision of Rabha in this case is in accordance with R. Nathan of the following Boraitha (in such a case as stated in our Mishna, it depends on circumstances): Who has to collect from whom? If he, the bequeather, has to take out of their hands, he can do so without any evidence; but if they have to collect from him, evidence must be brought. So is the decree of R. Jacob. R. Nathan, however, maintains: If the case comes on while he is in good health, it is for him to bring evidence that he was sick when the deed was written. On the other hand, they have to bring evidence that he was in good health, if the case comes on while he is sick. (Hence we see that R. Nathan's decision is according to the circumstances at the time the case is before the court; and the same is Rabha's theory.)

"*The sages, however, say,*" etc. What kind of evidence is required? According to R. Huna: Witnesses shall testify that he was in good health when the deed was written. And according to R. Hisda and Rabba b. R. Huna: The evidence should be by approval of this deed (*i.e.*, the defendant claims that he was then sick, and consequently the deed is valueless; but if they bring evidence from the court that it was approved by it, he must not be trusted, as it is to be supposed that the court would not approve it if it was not aware that he was in good health). R. Huna, who required witnesses, maintains: R. Meir and the sages differ as R. Jacob and R. Nathan do. And R. Hisda and Rabba b. R. Huna maintain: They (Meir and the rabbis) differ as to whether a deed which is admitted by the signer must be approved by the court or not. According to R. Meir, it is not necessary; and according to the rabbis, it is.

Rabha is also of the opinion that the evidence in question

must be witnesses. Said Abayi to him: What is your reason? Shall we assume that because all other documents state it was done when he was on his feet and in good health, and here it is not so mentioned, it is to be assumed that he was then sick? Why not say to the contrary, as in all documents of a sick person it is written: "It was done while he was sick in bed," and here it is not mentioned, it is to be assumed that he was then in good health? (And he answered:) Since it can be so said, and also the contrary, therefore we leave the money or the article in the hands of its possessor; and it is for the plaintiff to bring evidence.

The decision of this question is still in discussion, as R. Johanan and Resh Lakish also differ. According to the former, witnesses are required; and according to the latter, the approval of the deed.

R. Johanan objected to Resh Lakish from the following: It happened in the city of Bene Brack that one sold the estate of his father, and died; and his relatives complained that he was not of age when he died. And they came and questioned R. Aqiba whether they had a right to examine the corpse. And his answer was: First, you are not allowed to disgrace the dead; and secondly, the signs of maturity are subject to change after death. Now, according to my theory that witnesses are required, it is correct: as the buyers required evidence from the relatives, which they could not give, they asked for permission to examine the corpse. But according to your theory that the evidence should be by approval of the deed, let them, then, approve the documents, and hold the goods without any examination? And Resh Lakish answered: Do you think that his estates were still in the possession of his relatives, and the buyers were the plaintiffs? On the contrary, the estates were in the hands of the buyers; and the relatives were the plaintiffs. (Says the Gemara:) It seems to be so, as his relatives kept silence when Aqiba told them they were not allowed to examine; and if the buyers were the plaintiffs, they would certainly claim: We gave him money—let him be disgraced and disgraced. However, this cannot be taken as a support, as it can be said that therefore R. Aqiba said to them: "And secondly, signs of maturity are subject to change," because of their claim: Let him be disgraced.

(It was taught :) Resh Lakish questioned R. Johanan: There is a Mishna among the Mishnayoth of Bar Kapara: If one worked up a field and consumed the products as if he were the owner of it, and then one came and claimed, "It is mine," but the occupant showed him a document, whether bill of sale or deed of gift, and the plaintiff said, "I do not recognize such a document at all," the signatures which are on the document must be approved by the court (*i.e.*, it is sufficient that the witnesses should testify before the court that they recognize their signatures, but it is not necessary that they should testify that the sale or gift was made in their presence). If, however, the plaintiff claims: "I recognize this deed, but it was written only upon your request for a special purpose; but I never sold"; or, "I sold to you and never took any money," if the plaintiff brings evidence, then it must be done accordingly; but if there is no evidence, the deed is in force. Shall we assume that it is according to R. Meir, who said: "If one recognizes his document, the approval of it is not necessary," and not in accordance with the rabbis? And R. Johanan answered: Nay! I say that all agree such a document does not need any approval. Said Resh Lakish again: But there is a Mishna that they do differ. And he answered: That Mishna treats that the witnesses themselves impair the deed (*i.e.*, they testified that they signed it illegally). But can he, the giver of the document, be supposed to impair it? Rejoined Resh Lakish: But in your name it was said that you would approve the claim of the relatives who asked permission for the examination (cited above), as it seemed to you they were right. To which R. Johanan rejoined: This was said by Elazar, but *I* never said such a thing. Said R. Zera: If R. Johanan denies what was said by Elazar his disciple, will he also deny what was said by R. Janai his master? The same said in the name of Rabbi: If one admits that he wrote this document, it must nevertheless be approved. To which R. Johanan said, answering him: Rabbi, is this not the same as our Mishna states? The sages, however, say: It is for the plaintiff to bring evidence. And there is no other evidence but the approval of the document. And therefore (adds R. Zera), it seems that our master Joseph is right when he states in the name of R. Jehudah, quoting Samuel, that the rabbis said approval is not needed to a docu-

ment which is admitted by the signer. And he who holds that he still needs an approval is R. Meir. Also, by the expression of R. Johanan, "All agree," is meant the rabbis, as R. Meir was only a single individual who so holds. But does not the Mishna state the reverse? And also the Boraitha, does it not state in the name of the sages that it must be approved? Reverse the names in the Mishna, as well as in the Boraitha. But was it not stated above that R. Johanan is the one who requires that the evidence mentioned in the Mishna should be witnesses? This statement is also to be reversed (*i.e.*, R. Johanan said: The evidence should be with the approval of the deed). Then the objection must be reversed also—not that R. Johanan objected to Resh Lakish, but the reverse? Nay! So said R. Johanan to Resh Lakish: According to my theory that I require the evidence should be by the approval of the deed, it is correct that the buyers took possession of the estate which was sold to them by the alleged minor. But according to your theory, how can there be such a case—that the buyers should possess the estate? Where could they find witnesses who should testify that he was of age? And Resh Lakish answered him: I admit to you that the claim of the relatives ought not to be taken into consideration; for what was their claim as against the deed in which witnesses signed that "he was of age"? And there is a rule that witnesses have the preference; as it is assumed that witnesses would not testify unless they were aware of the case. Hence concerning this deed they would not sign it if they were not aware that he was of age.

It was taught: What must be the age of one who has the right to sell the estates left him by his father? Rabha in the name of R. Na'hman said: Eighteen. And R. Huna b. Hinna in the name of the same authority said: Twenty. R. Zera objected from the above case which happened in the city of Bene Brack, to whom R. Aqiba said: The signs of maturity are subject to change after death. And this can be correct in him who said eighteen, as then his relatives questioned the law if the corpse might be examined. But according to him who said twenty, of what use could the examination be? At that time the signs of maturity are already unrecognizable, as we have learned in a Mishna: If one gets to the age of twenty,

and the signs of maturity are not visible, they have to bring evidence that he has reached the age of twenty; and he, the castrate, is a legal "saris," who does not perform the ceremony of Halitzah and also cannot marry his brother's wife. Hence we see that after twenty the symptoms of maturity are already unrecognizable. The answer was: Was it not taught in addition to the Mishna by R. Samuel b. R. Itz'hak in the name of Rabh: Provided the symptoms of a "saris" were visible. Said Rabha: It seems that this explanation is right, as the Mishna states: "He, the castrate, . . . 'saris,'" from which it is to be understood that such signs were visible on the body; as if not, why should he be named "castrate"? But how is it if neither the signs of maturity nor of a "saris" were visible? How many years are needed, that he should be considered of age? Taught R. Hyya: After he reaches the majority of life (*i.e.*, thirty-six years, as life is considered seventy). It happened that such cases were brought before R. Hyya by the mothers, questioning him: What must be done, that the signs of age should appear? And he used to answer: If the lad was thin, see he should become fat; and if he was fat, he would advise that they should make him thin, as sometimes the signs came earlier because of thinness, and sometimes because of fatness.

The schoolmen propounded a question: How is he to be considered during the nineteenth year—nineteen, which is still not of age, or twenty? Rabha in the name of R. Na'hman said: The whole twentieth year, is he considered nineteen? And Rabba b. R. Shila in the name of the same authority said: As twenty. The statement of Rabha, however, was not heard from him plainly; but it was so judged from the following act: There was a lad who was between nineteen and twenty, who used to sell his father's estate, and Rabha had annulled all his acts. People who saw this thought that it was because he considered him not of age. In reality, however, Rabha did so because signs of foolishness were seen in him, as he used to free all his slaves.*

Giddle b. Menarshia sent a message to Rabha: Let the mas-

* At that time it was prohibited to free a bondsman without a good reason, according to Roman and Persian, as well as to Jewish laws.

ter teach us! How should a girl of fourteen years and one day who has a knowledge of business be considered? And he answered: If she has a knowledge of business, then her sale is valid, but not otherwise. Why was the question for a female and not for a male child? Because so was the case.

There was one lad, less than twenty, who had sold the estate of his father, and his relatives instructed him that when he should be at the court of Rabha he should eat dates and throw the pits at Rabha's person (for the purpose that Rabha should see he was a fool, and so annul his sales). He did so, and Rabha did indeed annul the sales. When the judgment was written, the buyers instructed him to go into court and say: The Book of Esther can be bought for one zuz, and the same is the price for Rabha's judgment. And he did so. Rabha then decided: His sales are valid. And when his relatives told him he was so instructed by the buyers, Rabha answered: He understands business if it is explained to him, and in such a case his acts are valid; and his previous act, that he threw the pits at me, was because he is too much of a scamp.

Said R. Huna b. R. Jehoshua: Concerning witnesses—his testimony may be considered at such an age (between nineteen and twenty). Said Mar Zutra: But only concerning movable property, and not real estate. Said R. Ashi to him: What is the reason that he is fit to be a witness for movable property—because his sales are valid? If so, let children of six and seven years be fit for this, as there is a Mishna: The purchase or sale of movable property by minors is valid. And he answered: Witnesses must be men, as it is written [Deut. xix. 17]: "Then shall both the men who have the controversy stand before the Lord," etc., which cannot be applied to children.

Said Amimar: If a lad of thirteen years and one day presented a gift to some one, his act is valid. Said R. Ashi to him: Why? Even concerning a sale where he should receive money, the rabbis enacted that it should be annulled, because he might sell too low. Shall we say, if he presents a thing without any money his act is valid? (Said Amimar to him:) And according to your theory, if such a lad bought a thing which is worth six zuz for five, should this be considered? This is certainly not so, because there is no difference whether it was worth more or less, as the rabbis annulled all sales made by such a lad who

does not understand business. And the reason is that the rabbis were aware that lads at such an age have an inclination for money; and if you should allow one to sell, he would sell all the estates of his father for a small amount. But concerning a gift it is different, as if he would not have any benefit from it, he would not do so; and therefore the rabbis enacted that his gift should be considered, so that others should also please him. R. Na'hman in the name of Samuel said: A young man before twenty may be examined for the signs of maturity concerning betrothals, divorces, the ceremony of Halitzah, and protesting against marriage, and as to selling the estates left him by his father. The Halakha, however, prevails, that between nineteen and twenty he is considered as before nineteen; and it prevails also in accordance with Giddle b. Menarshia, with Mar Zutra, and also with Amimar, and with all the laws which are stated by R. Na'hman in the name of Samuel.

MISHNA IX.: If one divides his estates verbally, no matter if he was in good health or dangerously sick, according to R. Elazar to real estate title is given by money, by a deed, and by a hazakah; and to movable property, title is given by drawing only. He was then told that it happened with the mother of the sons of Rukhl, who was sick and said: Give my jewelry, which is worth twelve manas, to my daughter, that the sages had listened thereto. And he answered: The sons of Rukhl ought to have been buried by their mother while they were still young (*i.e.*, they had bad habits, and therefore the sages fined them, that they should not inherit from their mother).

GEMARA: There is a Boraita: R. Eliezer said to the sages: It happened with an inhabitant of the city of Mruni, who was in Jerusalem, that he possessed much movable property which he desired to present to different persons; and he was told that he could not give them title, unless he did so together with some real estate. He went then and bought a rock near Jerusalem, and said: The north side of the rock shall belong to A, and with it one hundred sheep and one hundred barrels; and the south to B, and with it one hundred sheep and one hundred barrels. And when he was dead, the sages approved his will. Hence we see that, though the rock could not be considered real estate, as it could not be used for anything, nevertheless title was given. And he was answered:

This is no support, as the Mrunian was in good health when he did so; but this cannot be done by a sick person.

R. Levi said: It is allowed to make the ceremony of a sudarium with a sick person even on Sabbath, lest he become exhausted; but not because the Halakha is in accordance with R. Eliezer of the following Mishna.

MISHNA X.: R. Eliezer said: If it happens that a sick person divides his estates verbally on Sabbath, it may be listened to, because it is prohibited to write; but not on week days. R. Jehoshua, however, maintains: It was said on Sabbath, *a fortiori* when it happened on week days. Similar to this is: One may acquire title for a minor, but not for adults. So is the decree of R. Eliezer. R. Jehoshua said: For a minor, and *a fortiori* for an adult.

GEMARA: Our Mishna is in accordance with R. Jehudah, as we have learned in the following Boraitha: R. Meir said: The reverse is the case. If this happened on week days, his words must be listened to, because he is allowed to write; but not on Sabbath, because he is not allowed to write. So is the decree of R. Eliezer. R. Jehoshua said, on the contrary: It was said on week days, and so much the more on Sabbath. R. Jehudah, however, said: R. Eliezer's decree was, if on Sabbath, his words must be listened to, because he is not allowed to write; but not on week days, when he is allowed to write. And R. Jehoshua's decree was to the contrary. And the same is the case as to the latter part of the Mishna.

MISHNA XI.: Suppose a house falls upon A and his father, or on any persons, that one of them has to be bequeather and the other inheritor, and it is not known who dies first, and to the estate there is a claim from the widow for her marriage contract, and from other creditors. The heirs of the father say that the son died first; and the creditors say that the father died first, and the son afterward. (*I.e.*, the creditors of the son who had a right to the estate only if he died after his father, so that with the death of his father the inheritance came to him. But if he was dead before his father, he has nothing in the estate. And this is what his brothers claim, that the creditors have no right in the estate left by their father. Concerning a marriage contract, that will be explained in the Gemara.) According to the school of Shamaï, they have to divide; and according to

the school of Hillel, the estate must be left in the hands of the present occupants.*

If it happened that the house fell on him and his wife, the heirs of the husband claim that the woman dies first, consequently her husband has inherited from her; and the heirs of his wife claim that he died first, consequently they have a right to her marriage contract and also to her own estate. They have to divide, according to the school of Shamai. But the school of Hillel say: They must leave the estate in the hands of its present occupant. And the occupants are to be considered as follows: The estates belonging to the marriage contract are to be considered as in the hands of the husband's heirs. But her own estates, which she brought with her to her husband, and which ought to go out with her by death or divorce, are to be considered in the hands of the heirs of *her* father.

If, however, the house falls on one and his mother, both schools agree that it must be divided. R. Aqiba, however, said: I hold that they (the schools) differ in the latter case also; and the school of Hillel are still of the opinion that estates must be left in the hands of the occupants. Said Ben Azai to him: We deplore that the schools differ in the former cases, and you come to add the third one, in which the rabbis testify that they have agreed.

GEMARA: The estates which were brought by the deceased woman, mentioned in the Mishna—to her husband for usage of fruit only, according to the school of Beth Hillel. Who is to be considered the occupant? According to R. Johanan: The heirs of the husband. According to R. Elazar: The heirs of the woman. R. Simeon b. Lakish, however, said in the name of Bar Kapara: Such must be divided. And the reason of this statement was taught by Bar Kapara himself, that as the claims of both parties are equal (*i.e.*, the heirs of the husband claim that all the products of this estate belonged to the deceased, as he had a right to sell them, and therefore they belong to his heirs; and the opponents claim that they were only to be used while he was alive, and therefore what was not

* The Gemara to this Mishna we transfer to Mishna 8 of the succeeding chapter, as the proper place. We also deemed it necessary to put all three Mishnas which treat of falling houses together, though in the original text they are in three separate places.

consumed by him, if his wife were alive she would certainly take with her estate; hence it belonged to her, and after her death to us), it is to be considered doubtful money, the law of which is division.

"*R. Aqiba said . . . in the hands of the occupants.*" But who are considered their occupants? R. Aila said: The heirs of the mother; and R. Zera: The heirs of the son. When R. Zera ascended to Palestine, he retracted from his statement in Babylon and accepted the system of R. Aila. Rabba, however, retained the system of R. Zera as a Halakha. Said R. Zera: From my retraction, I see that the air of the land of Israel makes one wise; as after I came here I saw that my statement while I was still in Babylon was erroneous.*

"*Said Ben Azai to him,*" etc. Said R. Simlai: Infer from this that Ben Azai was an associate disciple of R. Aqiba; as if he were a disciple only, he would have said to him, "*The master said,*" and not, "*And you (thou).*"

A message was sent from Palestine as follows: If a son has sold his share of the inheritance of his father to some one, and dies while the father was still alive, and thereafter his father died, the son of the seller has a right to take away the goods from the buyer. (Because, at the time sold, the seller has nothing as yet in his hands, and the sale was for that which would be his in the future; and as the son died before his father the goods were never his, and his son is now the heir of his grandfather, to whom the goods in question belong; hence he has a right to take them away.) And this is a complicated case in the law of money matters. But let the buyers say: Your father has sold, and you are taking away? What a claim is this! Cannot the plaintiff say: My basis is my grandfather, from whom I inherit (and my father had not any right to sell this—as explained above); and that such a claim is to be considered may be supported by [Ps. xlv. 17]: "*Instead of thy fathers shall be thy children: thou shalt appoint them as princes in all the land.*" Hence it is not at all a complicated case in money

* The commentators differ concerning the explanation of this, as well as concerning the completion of the text. Rashbam affirms that Rabba was not in the text at all. Gershom changes the question concerning the cases in the Mishna and explains them differently. We have done what we could to make the passage intelligible to the reader.

matters. And if such there be, it would be the following: A first-born who sold the share prescribed to him while his father was still alive, and died before his father, the first-born's son has a right to take away from the buyers after the death of his grandfather. Hence his father sold that to which he was entitled; and his son, whose basis is his deceased father, takes the goods away. And this is complicated, as he cannot say, "My basis is my grandfather," for the grandfather had nothing to do with the double share of the first-born son. But even this cannot be called a complicated case, as he may claim, "My basis is my grandfather, and not my father, who has never possessed the goods he sold; for now only do I take the place of my father, who was a first-born, and take his share." Hence it is in accordance with the usual law. Therefore, if in the message of Palestine was said "a complicated case," it might be the following: If one sign a document before he robbed some one, and thereafter he became a robber, who is no longer competent to be a witness, he has no right to testify to his handwriting; but others, who know his handwriting, may. Hence he is not trusted, and the others who came upon his basis are trusted. Is this not complicated? But perhaps it treats of when his handwriting was already approved by the court, while he was still righteous? Therefore it is to be assumed that they meant the following case: If one signed a document as a witness to a stranger, and thereafter he became his son-in-law, he has no right to testify to his signature; but others may testify that they recognize the writing of the son-in-law, and then it may be relied upon. Hence he is not trusted, and others are. And you cannot say that it means only when his handwriting was already approved by the court at that time, as R. Joseph b. Minumi in the name of R. Na'hman said plainly: Even in case it was not. However, even this cannot be called complicated, as it may be said that it is thus decreed by the law. A son-in-law must not witness in a case of his father-in-law, not because it is feared he may lie, but because it is prohibited, even if the son-in-law were Moses our master. Therefore we must come to the conclusion that the complication lies in the first case mentioned in the message, and the objection based on the cited verse is not to be taken into consideration, as the verse speaks of a "blessing." But how can you say that it

speaks of a blessing, and nothing is to be inferred from it? Does not our Mishna state: "If the house falls upon him and his son, or any persons," etc.? Does it not mean, by the "heirs of the father," grandsons, and "any persons," brothers of the deceased? Now, if you bear in mind that one cannot say, "I come on the basis of my grandfather," as the cited verse cannot serve as a support, then, even when the son dies first, how is it? Let the creditors say: We claim the inheritance of the father? Nay! By "the heirs of the father" is meant the deceased's brothers; and by "any persons," his uncles, brothers of his father.

"*One and his mother*," etc. R. Shesheth was questioned: Nay! A son inherits from his mother when he is already in the grave, so that his brothers from his father's side should inherit from him? (The illustration may be found above, p. 317.) Answered R. Shesheth: This we have learned in the following Boraitha: If the father was taken into captivity and died there, and at the same time his son dies in his country, or *vice versa*, and it was not known who died first, the heirs of the father and the heirs of the son (on his mother's side) may divide among themselves the inheritance. Now, if the son while in the grave could inherit from his mother, even if he dies first, let him inherit from his grandfather on his mother's side, and then his brothers on the father's side would inherit from him. Infer from this that while in the grave nothing is to be inherited. Said R. Aha b. Minumi to Abayi: This may be inferred also from our Mishna, which states that concerning one and his mother all agree that they must divide. And if the law of inheriting in the grave were in force, let him inherit from his mother while in the grave, the same to revert to his brothers on the father's side. Hence such a law does not hold good. And why not? Said Abayi: There is the same expression in the Scripture concerning the inheritance of a husband from his wife, and a son from his mother. As the first does not inherit while in the grave, so it is with the second, etc. (This has already been explained in Chapter VIII., p. 254.) (Here is repeated the whole story of Bar Sisin's estate, preceding volume, pp. 86-87.)

CHAPTER X.

HOW DEEDS SHOULD BE WRITTEN AND WHERE THE WITNESSES SHOULD SIGN. CONCERNING ERASURES OF SOME WORDS IN DEEDS. IN WHICH CASES BOTH PARTIES MUST BE PRESENT AT THE WRITING OF THE DEEDS, AND IN WHICH ONE OF THEM SUFFICES. CONCERNING A DEPOSITED DEED WHICH WAS PAID IN PART. HOW SHALL THE COURT APPROVE AN ERASED DOCUMENT? PROPERTY FOR PRIVATE USE WHICH WAS LEFT TO POOR AND RICH BROTHERS.

MISHNA *I.*: A simple "get" * (document) the witnesses must sign at the end of the contents. A folded one, however, the witnesses must sign outside.† But if the witnesses signed their names outside in a simple one, or inside in a folded one, both are invalid. R. Hanina b. Gamaliel, however, said: If in a folded one the signatures of the witnesses were inside, it is valid, as it can be taken apart and will constitute a simple one. Rabbon Simeon b. Gamaliel maintains: All must be done as is the custom of the country. A simple document must be signed by two, and a folding one by three witnesses. If there was only one witness to a simple and two to a folding, both are invalid.

GEMARA: Whence is this deduced? Said R. Hanina: From [Jer. xxxii. 44] "Men shall buy fields for money, and write it in deeds, and seal them, and certify it by witnesses," etc. "Write it in deeds" means a simple document; "seal" means a folding one; "certify" means by two witnesses; "by witnesses" means three. How so? We must say, then, two

* All documents were called by the Mishna "get." This term was afterwards applied to a bill of divorce. The Gemara, however, uses the term "shtar" for documents.

† In ancient times they used to write documents as follows: The scribe wrote one line, then left a blank the size of the line written, and folded it over and sewed it; then he wrote on top of the folding, and again left a blank of the same size, and folded it over the writing and sewed again, and so on; so that after the document was complete the signatures of the witnesses remained on the outside.

witnesses for a simple, and three for a folding one. But perhaps the reverse? Common sense dictates that a folding one, which is added to in folding, should be added to also in witnesses. (The discussion proceeds to deduce this from the Scriptures, which were objected to as usual, and the Gemara came to the following conclusion): The folding one is only an enactment by the rabbis; and the verse above cited was only a light support. And why this enactment? Because of the many priests who used to live in their city. (The law prescribes that a priest, having divorced his wife, it is prohibited to him to remarry her; which is not the case with a commoner.) And as the priests are usually ill-tempered, they used to divorce their wives as soon as they became angry. Therefore the rabbis enacted that the "get" should be folded and sewn several times, that it might prolong the time, in order that they should become quiet, and recede from their previous intention. This is correct concerning divorces. But why for other documents? Because all kinds of documents were then called "gets," they enacted that all should be done in one manner.

In what place should the witnesses sign a folding document? According to R. Huna: Between one folding and another (*i.e.*, in the folding space above the lines, and thereafter it was folded and sewn so that the signatures were inside). According to R. Jeremiah b. Abba: On the reverse side, and exactly opposite the writing. Said Rami b. Hama to R. Hisda: According to R. Huna, who maintains in the folding space above the lines which is thereafter also folded, it is to be assumed that it remains inside; but this is not so, as it happened that a folding document was brought before Rabbi, and he exclaimed: There is no date to it. To which R. Simeon his son answered: Perhaps the date is inserted, etc. (*post*, p. 363). Now, if it were as R. Huna said, Rabbi ought to say: There is neither date nor witnesses (as the witnesses signed inside, one could not sew it when it was folded). And R. Hisda answered: Do you think that R. Huna means between the folding inside? He meant outside. But if so, why should not forgery be feared, as one can write inside what he likes, while the witnesses have already signed outside? In the document must be written at the end, "All its contents are true," and they re-

main forever. Hence to that which is written thereafter no attention is given. But it is still to be feared that after it is written he can forge what he pleases, and then write again, "All this is true," and have it signed by other witnesses? A document must contain only one approval that "all is true," but not more. But still it is to be feared that he can erase the approval, adding what he pleases, and then write, "All is true," etc. To this it was said by R. Johanan: If there was inserted a word between the lines, and thereafter the witnesses testify it was inserted at their instance and they approve it, the document is valid; but if some words were erased, then, although approved at the end, the document is nevertheless invalid. And this was said concerning an erasure in the place of the words "all that is written is true," and the size of these words. But even according to R. Jeremiah b. Abba, who said: On the reverse, and opposite the writing (*i.e.*, where the writing finishes inside, he shall begin opposite to write his name; so that if there should be some lines more over the signature of the witness it would be considered forgery), it is also to be feared that one might forge some lines, and add one more witness, opposite the forgery, and might say: My intention was to add one witness more? And the answer was: Do you think that the witnesses have signed lengthwise, in order? No! They signed one under the other, so that no more lines after the witnesses' signatures could be added.*

R. Itz'hak b. Joseph in the name of R. Johanan said: To all the erasures which are in the document must be written at the end, "With this signature we approve them," etc.; and in the mean time they must mention the abstract of the contents in the last line. And why so? Said R. Amram: Because the last line is not taken into consideration, as it can easily be forged; as usually the witnesses do not sign so near to the writing that one line could not be inserted, and therefore if the abstract of its contents is written attention is given, but not to something new. And to the question of R. Na'hman: What is the basis of your statement? he answered: The following Boraitha: If the signatures of the witnesses were sepa-

* The text continues to discuss the different kinds of forgery possible, and gives illustrations so complicated that it would be difficult for the reader to get any idea of them. They are unimportant, and therefore omitted.

rated by a space of two lines from the writing, the document is invalid; but if by one line, it is valid. Let us, then, see what is the reason that two lines' space make the document invalid. Is it not because one can forge the two lines? But the same can be done with one line also? We must then say that if a new sentence is written on the last line it is not taken into consideration. And so it is.

The schoolmen propounded a question: How is it if there is space for one line and a half? Come and hear the following: If there is space for two lines, it is invalid; for less than two, it is valid. If there were four or five witnesses to a document and one of them was found to be a relative, or incompetent for some other reason to be a witness, the document may remain in force by the remaining witnesses. And this is a support to Hezekiyah, who said: If there was a space left, and this was filled up with the signatures of relatives as witnesses, the document is valid. And do not be surprised at such a law (why should not the signatures of the relatives who are not competent to witness in that case harm this document?), as such a law is to be found concerning a Sukka: If on the roof of the Sukka was space to the size of *three* spans uncovered, it makes the Sukka invalid; but if it was covered with illegal things, the size of *four* is needed to make it invalid.

The schoolmen questioned: In the two lines in question, is it meant with their usual space or without? Said R. Na'hman b. Itz'hak: Common sense dictates that their space is included; as if it were supposed that it meant without, of what use could be the size of one line without any space to it? (If one should come to forget this line, he would then be compelled to write it in such characters that it would be entirely different from the original and immediately recognized. Infer from this, therefore, that "with their space" is meant.)

R. Sabbathi said in the name of Hezekiyah: The space of the two lines in question means of the handwriting of the witnesses, not of the scribes; as if one wants to forge, he does not go to the scribes (and usually the handwriting of a commoner is larger than that of a scribe). And what size is meant?

Said R. Itz'hak b. Elazar: As in writing, e.g., $\left\{ \begin{array}{c} l g k z \\ k z l g \end{array} \right\}$, which makes two lines in four spaces. According to R. Hyya b. R.

Ami in the name of Ula: Two lines and three spaces. According to R. Abuhu: One line and two spaces.* Said Rabh: This was all said about the space between the contents of the document and the signature of the witness. But from the signature of the witness to the approval of the court, it does not matter how much space is left. R. Johanan, however, said: All this was said concerning the space from the contents to the signatures of the witnesses; but concerning the space from the signatures of the witnesses to the approval of the court, even if there was one line, it is invalid.†

"*R. Hanina b. Gamaliel*," etc. Rabbi objected to the statement of R. Hanina, thus: How could one make from a folding one a simple, if their dates were entirely different? As in a simple document which is dated according to the years of the king, if the king was in his first year, it is written: On fourth day of such and such a month, in the first year of king so and so; and in a folding one they used to add one year to the kingship of the ruler (*c.g.*, when it was in the first year, they used to write in the second; and if in the second, they used to write in the third). (Rashbam says: It was the custom of the nations to add one year to the kingship of the ruler in their documents. And the rabbis enacted: In a folding one it shall be dated according to the custom of the land, for the above-mentioned reason; but not in simple documents.) Now, if you say that it can be taken apart and made a simple one, it may happen that one can borrow money with a folding one, and during this time may come into some money and pay his debt before due; and to the request for a return of the document, one may say that he lost it, and give a receipt. Then, when the document falls due, he can make it into a simple, and require his money again (as in the folding one there was added one year, hence the time due in a simple comes one year later, and he can claim that he borrowed money again for the current year)? Rabbi holds: Concerning a folding one, no payment is made upon a receipt unless the document is returned or destroyed.

* Here also are illustrations of Hebrew words, which it would be difficult for the English reader to understand, and are therefore omitted.

† We have omitted the discussion in the Gemara as to the reasons of Rabh and Johanan about the risk of forgery, with many illustrations of great complication, which would hardly be understood if translated, and are also of no importance.

But was, then, Rabbi acquainted with a folding document? Did not one come before Rabbi, who was about to annul it because it bore a later date? And Zunin said to Rabbi: So is the custom of this nation, that if the king has ruled one year they count him two; and if two, three. After he had heard it from Zunin, he enacted the law that no money should be paid upon a receipt. There was a document in which was written: In such a date of the year of Orkhon, A had borrowed money from B (but the number of the year was not written), and R. Hanina, before whom the case came, said: It must be examined when this Orkhon ascended the throne; and perhaps it was several years after, as the meaning of Orkhon is "lengthy," and he was named Orkhon because he was a good many years on the throne. Said R. Hoshea to him: So is the custom of this nation: the first year they named him Orkhon, and the second year Digon. Hence this document must be counted from the first year of the present ruler. But perhaps it was when he ascended the throne the second time, as once he abdicated and then ascended again? Said R. Jeremiah: At the second time he was named Orkhon-Digon, and not Orkhon only.

There was a folding document which came before Rabbi, and he said: There is no date to it. R. Simeon his son then said to him: Perhaps it is inserted between its folds! He took it apart, and found the date. Thereupon Rabbi scrutinized him. To which Simeon said: Not I was the writer of it, but Jehudah the Tailor. And Rabbi answered: Leave out slander. It happened at another time that R. Simeon was sitting before Rabbi, and reading for him a chapter of Psalms, and Rabbi said: How correctly and nicely it is written. To which Simeon answered: Not I, but Jehudah the Tailor, wrote it. And also to this Rabbi remarked: Leave out slander. (Questioned the Gemara:) It is correct that the first time he told him he should leave out slander, as Rabbi disliked folding documents, and was angry with the writer of it. But what slander was it if he said that the correct and nice writing was by Jehudah? This is in accordance with R. Dimi the brother of Safras, who taught: One must be careful in praising his neighbor, as very often blaming comes from praising.

R. Amram in the name of Rabh said: From the following three transgressions one is not saved day by day, namely: (a)

Thought about sin (*e.g.*, if he sees a handsome woman); (b) calculation of the effects of prayer—expectation of the granting of one's prayer as a due claim; (c) and slander. Slander! Do you mean that people slander one another every day? It means indirect slander (*e.g.*, while praising or talking of one, one indirectly comes to blame). R. Jehudah said in the name of Rabh: The majority of men are suspected of robbing (*i.e.*, in business every one looks out for himself, without taking care lest he do wrong to him who deals with him), the minority are suspected of adultery, and all of them of indirect slander.

"All must be done as is customary in the country." But does not the first Tana also hold that the customs of the country are to be observed? Said R. Ashi: At those places where a simple is customary, and one told the scribe to make it, and he made him a folding one, it is certainly invalid; and *vice versa*. The point of this difference, however, is the places where both are customary, and he ordered the scribe to make for him a simple, but he prepared a folding one. According to the first Tana: It is invalid. According to R. Simeon: It is valid, as it may be supposed that he ordered him to make for him a simple only for the scribe's sake, that he should have less trouble; but if he did not heed, and made a folding one, it must not be ignored. Said Abayi: R. Simeon b. Gamaliel, R. Simeon, and R. Elazar all are of the opinion that in such a case it must be supposed that the giver of the order did so only to show him what was better for him; but he did not intend to be particular. B. Gamaliel as just mentioned; R. Simeon with his statement that if one has deceived a woman, not to her evil, but to her good (*e.g.*, if he said to her: You are betrothed to me with this *silver* dinar, and it was a golden one), his act is valid; and R. Elazar of the following Mishna: If a woman said: Go and receive my divorce at such and such a place, and he received it at another place, it is invalid. But according to R. Elazar it is valid, as it is to be supposed that she only showed him the place where she supposed it was better for him to go, but was not particular in her words.

"If there was only one witness to a simple," etc. It is correct what the Mishna teaches us: A folding document which was signed by two witnesses only is invalid, as in all other cases two witnesses suffice. But to what purpose does it state

that one witness to a simple is invalid? Is this not self-evident, as there is no case in which one witness should be sufficient? Said Abayi: It teaches: Even if, in addition to that witness who has signed, there were another who testified the same verbally, it is nevertheless invalid. Amimar, however, had in a similar case which came before him decided that the document is in force. And to R. Ashi's objection that Abayi holds it invalid, he answered: I do not hold with him. But how would Amimar explain the above question—to what purpose is it stated in the Mishna? He would answer thus: It came to teach that as a simple document with one witness is invalid biblically, so it is with two witnesses to a folding. And as a support to Amimar there may be taken the following: The colleagues of R. Jeremiah in Palestine sent a message to him: How is it if there is one witness in writing and the other verbally—should they be conjoined for decision upon their testimony, or not? We do not question, how is it according to the first Tana, the opponent of R. Jehoshua b. Kar'ha, who maintains, in Tract Sanhedrin: Even two with two must not be conjoined under certain circumstances, and so much the less one with one. But our question is, how is it according to R. Jehoshua, who decided: If there were two witnesses in writing and two verbally, they are to be conjoined? Does he hold the same when there was one and one, or not? And R. Jeremiah answered: I am not worthy that you should send to me such a message. But as you have already done so, I may say that the opinion of your disciple is that they may be conjoined. (Said R. Ashi:) We have heard that the message was thus: The colleagues sent to R. Jeremiah: How is the law if, of two witnesses, one of them has testified before one court and the other before another—may both courts be conjoined to decide upon their testimony? We are aware that according to the first Tana, the opponent of R. Nathan: Even if they had testified at different times before one court, their testimony is not to be taken into consideration, two courts are out of the question. But according to R. Nathan, who says: "In one court their testimony may be conjoined," does he hold the same with two courts, or not? And R. Jeremiah answered them as said above. Rabhina, however, said: The message was thus: If three were sitting as a Beth Din to approve a docu-

ment, and thereafter one of them died, must they write in their approval, "We were sitting three, but one is gone"; or is it not necessary? And he answered them: I am not worthy that you should send questions to me, but as you have done so, I may say that the opinion of your disciple is that it is necessary they should write, "We all three were sitting as a Beth Din, according to the law, to approve this document, but one of us is gone, and therefore only we two sign." And for this answer R. Jeremiah was returned to the college (above, p. 71, it was written that he was driven from the college).

MISHNA II.: If in the document was written, "hundred zuz which make twenty selas," he collects only twenty selas. If, however, it was written, "hundred zuz which make thirty selas," he collects only one mana (which only makes twenty-five selas). If there was written, "silver zuz which *are*," and the preceding words were erased, then the document is good for no less than two; "silver selas which *are*," and the preceding was erased, no less than two selas; "dracontiums which *are*," it means also no less than two.

If on the top of the document was written "a mana" and on the bottom "two hundred zuz," or *vice versa*, the last one must always be taken into consideration. But if so, why is it at all necessary that the amount should be written at the top? To the end that should it happen that in the words of the bottom one letter should be erased, then we may learn it from the top one.

GEMARA: The rabbis taught: If it was written "silver," without mentioning any particular coin, the document is good for no less than one silver dinar; and if "silver dinars," or "dinars of silver," then it is no less than two silver dinars. If, however, "silver to be paid with dinars," then it is no less than two golden dinars (it being understood that he borrowed from him silver to be paid with gold dinars, and as there is a plural it is no less than two).

The master said: "Silver no less than a dinar." But perhaps it means a piece of metal? Said R. Elazar: It means it was written a silver coin, but it was not mentioned which. But if so, why should it not mean perutas? Said R. Papa: It treats of those places where the perutas were not made of silver.

The rabbis taught: If the documents read "gold," it is not less than a golden dinar; "golden dinars," or "dinars of gold," it is not less than two golden ones. If, however, it was written, "gold to be paid with dinars," he must pay in gold the value of two *silver* dinars. But why should this not be explained: He shall pay him in good gold to the value of two golden dinars? Said Abayi: The defendant has always the preference (*i.e.*, by the general name dinar is meant a silver one; of a golden dinar it must be said plainly *golden*, and as here it is mentioned to be paid with dinars, and the word *gold* is omitted, the holder of the document has to suffer). But why in the first case, where it reads "silver to be paid with dinars," you say he shall pay two golden dinars? Said R. Ashi: That Boraitha treats of when the document reads "denri," and the latter Boraitha when it was written "*denrin*"; and "denri" means gold, and "denrin" silver. And my support is from a Mishna in Tract Kinin: ". . . It happened that the price of kinin in Jerusalem increased to the extent of denri in gold. Said R. Simeon b. Gamaliel: I swear by the Temple that I go not to bed this night before their price shall decrease to denrin." Hence denrin means silver, and denri gold.

"*On the top of the document*," etc. The rabbis taught: The bottom may be learned from the top when there is only one letter erased; but not when two (*c.g.*, if it was written, "Hanan of Hanani," or "Anan of Anani"—*i.e.*, the *i* was erased). Let us see! Why not two letters? Because if there were a name of four letters, two would constitute one half of a name. The same can be said with one of two letters, as there are names which consist of two letters only; * then the one would be one half of a name. Therefore we must say that the exception of two letters is because it might happen in a name of three letters, and when two are erased the greater part of the name is missing.

There was a document in which was written "six hundred and a zuz," and R. Chrabia sent it to Abayi, questioning him: Does it mean six hundred staters and one zuz, or six hundred perutas and a zuz. And he answered: Eliminate perutas, which it is not usual to write in a document, as generally they are counted together to make from them dinars or zuz. This

* In the Bible there are many examples of names which consist of only two letters.

must therefore mean six hundred staters. But as there are staters of two zuz, and also others of the same name of half a zuz, and it was said above that the defendant has the preference, the holder of the document must suffer, and he takes only six hundred half-zuz and a zuz. Abayi said: If one desires that his signature shall be known in the court, he shall not write it at the bottom of a paper, as one can find it, but write at the top that he owes him money. And there is a Mishna: If one shows a document with his handwriting that he owes him money, he may collect from unencumbered estates.

There was a toll-master of a bridge who was a Jew, who said to Abayi: Let the master show me his signature, as it is my custom to allow the rabbis to pass without pay (I would leave it with my assistants so that if it should happen you would like to pass, they will not demand payment). Abayi showed him on the top of a piece of paper. He, however, tried to draw the paper so that the signature should come a little lower, and Abayi said to him: Do not try, as the rabbis have preceded you with their advice to sew a signature at the very top of the paper. Abayi said again: From the word "thlath," which means three, to the word "eser," which means ten, one shall not write in a promissory note at the end of the line, to prevent forgery.* But if it happened that he did so, he should repeat the word two or three times, so that one of them should occur in the middle of the line.

There was one document in which was written: "A third of a vineyard"—in Aramaic "Thiltha Beperidisa"—and the owner of this document erased the top and the bottom of the first letter of the second Hebrew word, so that from the Beth he made a Vav, which means "and," so that the document, as brought before Abayi, read: "A third and the vineyard," and claimed a third of the seller's garden and the whole vineyard. When Abayi examined the document, he asked him: Why does the Vav stand so extended in the world? He then urged him to confess, which he did.

There was another document, in which was written: The shares of Reuben and Simeon my brothers ("Achai" in He-

* "Thlath" means three, "thlathin" thirty; and so also is it with all the words from three to ten: e.g., "arba" means four, and with the suffix "in" it means forty; "eser" means ten, "eserin" means twenty.

brew) were sold to me. The buyer, however, added a Vav for the word Achai, and as the brothers had another brother by the name of Achai, he claimed that he bought the shares of all three brothers—Reuben, Simeon, and Achai. With this document he came to the court of Abayi. And there also Abayi asked him: Why is the world so narrow to the Vav? And also he was urged to confess, which he did. There was another document, which was signed by Rabha and R. Aha b. Ada. When it was brought before Rabha, he said: I recognize my handwriting, but I never signed my name in the presence of R. Aha b. Ada. He urged the holder of the document to confess, which he did. Then said Rabha to him: I understand how you might easily forge *my* name; but how could you do so with R. Aha's, whose hands are trembling? And he answered: I would put my hand on the rope-bridge, to imitate a trembling writing.

MISHNA III.: A divorce may be written by the court for a husband in the absence of his wife (because, according to the ancient law, the consent of the woman was not necessary); and an approved receipt for a marriage contract to be handed to the woman in the absence of her husband, provided the court knows them—the husband must pay the fees. A promissory note may be written for the borrower in the absence of the lender, but not for the lender unless the borrower is present; and the fee is to be paid by the borrower. A bill of sale may be written for the seller in the absence of the buyer, but not for the buyer unless the seller is present; the buyer pays the fees. Documents of betrothal and marriage must not be written unless both are present—at the expense of the groom. The same is the case with documents for hiring, and contracting fields and gardens; and the expenses are to the contractors. Documents of arbitrating, and all other acts of mediating by the court, must not be written unless both parties are present—at the expense of both.

R. Simeon b. Gamaliel, however, maintains: The latter documents must be written in two copies, one for each party.

GEMARA: What does it mean—provided the court knows them? Said R. Jehudah in the name of Rabh: They shall know exactly the name of the husband concerning a divorce, and the exact name of the woman concerning a receipt.

R. Safra, R. Aba b. Huna, and R. Huna b. Hinna were sitting together in the presence of Abayi and were deliberating over the statement of Rabh just mentioned—concerning a divorce, the name of the husband, but not the name of his wife? and concerning a receipt, the name of the woman, though they do not know the name of the husband? Why should it not be feared that this man would furnish the divorce to another woman, whose husband bore the same name as himself? And the same is the case with the woman: she may furnish her receipt to a man whose wife bears the same name. Said Abayi to them: So said Rabh: The name of the husband and of his wife, concerning a divorce; and the same is the case with a receipt—the name of the woman and her husband. But why should it be prepared and given to the husband? Is it not to be feared that two men who bear one and the same name should reside in the same city (*e.g.*, Joseph b. Simeon), whose wives also bear the name of Rachel, and one can take a divorce and give it to the wife of the other? Said R. A'ha b. Hinna to them: So said Rabh: If two men of the same name reside in one city, they cannot divorce their wives unless both the men named and their wives are present. Still, it is to be feared that one may go to another city, name himself according to one of the inhabitants of his city, and take a divorce, and thereafter return to his city and furnish the divorce to the wife in whose husband's name the divorce was made out. Said R. Huna b. Hinna: So said Rabh: If one was known under one name thirty days in succession, there is no fear that he bears a false name, as he would be afraid to bear it for such a long time. But how is it if one requires a divorce should be prepared for him before he was known thirty days—shall he not be listened to? Said Abayi: This can be proved by somebody calling him suddenly by this name, and he answered. R. Zebid, however, maintains: A swindler knows what he is about, and is careful. And therefore it is no evidence if he answers to a sudden call.

There was a receipt approved by Jeremiah b. Abba. However, the same woman came into his court to claim her marriage contract several years later; and when her receipt was shown to her, she claimed to be not the same woman (*i.e.*, it was another woman who bore my name and signed the receipt). Said R. Jeremiah: I also was of that opinion, and I said so to

the witnesses who signed this document; but they told me you are the same but older, and therefore your voice has changed. And the case came before Abayi, who said: Although it was decided by the rabbis: If one said something in behalf of the plaintiff or the defendant, he has no right to retract from the first statement, and decide otherwise; however, with a scholar, who is not used to look in the face of a woman and to be particular as to her voice, it is different, as it must be supposed that after he was told she was the same, he himself had recognized her.

There was another similar case before the same R. Jeremiah, who said to that woman: I am sure you are the same. And also here Abayi decided: Although a rabbi is not used to look in the face of a woman, etc.; but when he says he did so, and is sure, he may be trusted.

Abayi said: It is advisable for a young scholar, who goes to betroth a woman, that he shall take with him a commoner; as otherwise they may substitute another woman, and he will not notice it.

"The husband must pay the fees," etc. Why so? Because it is written [Deut. xxiv. 1]: ". . . he may write and give," which means at his expense. In our time, however, it is not so customary, because the rabbis put the expenses to the account of the woman, in case the husband should decline to bear the expenses and postpone the divorce in a case where the woman is compelled to demand it.

"Paid by the borrower," etc. Is this not self-evident? It treats even where he takes money for business at a half profit.

"The buyer pays the fees," etc. Is this not self-evident? It treats even in case the seller sold his field because of its infertility.

"The expense of the groom," etc. Is this not self-evident? It means even if he were a scholar and the court were certain that they would be pleased to have him as a son-in-law even at their expense.

"The expenses are to the contractors," etc. Is this not self-evident? It speaks even in case it must remain for a year or two unfertilized for the sake of the estate.

"Arbitrating," etc. What kind of documents is meant? In this college it was explained: The documents of the claims

which the scribes of the court have to copy so that the parties should not change afterwards. R. Jeremiah b. Abba said: It means, in case each one chooses his arbitrator.

"*One for each party,*" etc. Shall we assume that the point of their difference is, if one may be compelled not to act like a Sodomite? According to the first Tana: If one declines to pay the half of the expenses, it is an act of a Sodomite, and he must be compelled to do so. And according to R. Simeon: It is not, and he must not be compelled? Nay! All agree that such cases are to be compelled. Here, however, it is different, as the reason of R. Simeon's decision is: One may say, I would not like that my claim and my decided right should always be before your eyes, while I do not possess them; and this would be a burden to me, as if a lion would lie at my house, fearing every time that you might come to quarrel with me.

MISHNA IV.: If one has paid a part of his debt and deposited his document with some one, with the stipulation: If I should not pay you from date until a certain day, you may return this document to the lender, and finally he failed to pay; according to R. Jose: The depositary may return, and according to R. Jehudah: He must not.

GEMARA: What is the point of their difference? R. Jose holds: An *asmachtha* * gives title. And R. Jehudah maintains: It does not. Said R. Na'hman in the name of Rabba b. Abuhu, quoting Rabh: The Halakha prevails with R. Jose. When they came to say the same before R. Ami, he said to them: After such an authority as Johanan teaches us, once and twice, that the Halakha prevails with R. Jose, what can I do? However, the Halakha does not prevail with R. Jose (remarks the Gemara).

MISHNA V.: If it happened to one that a promissory note became erased, he must find witnesses who are aware of the date when it was written, and bring them before the court, and they have to make the following approval: A, the son of B, came here with his note, which was erased on such and such a day, and C and D were his witnesses.

GEMARA: The rabbis taught: The approval must be written as follows: "We three, E, F, G, the undersigned, were sitting together, and before us was brought by A, the son of B,

* This term is explained in previous volumes in several places.

an erased note, which was signed on such and such a day, and C and D are his witnesses." And then if there be added: "We have examined the testimony of the witnesses, and have found it correct," the holder of the document may collect with it, without further evidence. If, however, this were not remarked, he must bring evidence.

If a document was torn, it is invalid; but if it was torn of itself, it is valid. If it was erased or faint, if still recognizable it is valid.

What does it mean—"was torn," and "was torn of itself"? Said R. Jehudah: If it was torn by the court; and of itself means not by the court. How is it to be known that it was torn by the court? Said R. Jehudah: If the places where the signatures of the witnesses, the date, and the amount were written are torn. Abayi, however, said: The court used to tear it in its length and width.

There were Arabs who came to Pumbeditha, who used to compel the inhabitants to submit to them the deeds of their estates. The inhabitants of the city came to Abayi with their deeds, requesting him to take a copy of them, so that, in case they should be compelled to deliver to the Arabs the originals, the copies should remain, so that in the future they could be sued. Said he: What can I do for you, since R. Safra long ago decided that two deeds must not be written for one field, because it might happen that one would seize it once, and again thereafter. They, however, troubled him, and he said to his scribe: Write for them on an erased paper, and the witnesses shall sign on the paper which is not erased, as such a deed is invalid. Said R. Aha b. Minumi to him: But perhaps the writing will be recognizable, and then it will be valid, as stated in the Boraitha above? And he answered: I did not say he should write a correct deed: I meant he should write some letters of the alphabet.

The rabbis taught: If one comes before the court claiming that he has lost a promissory note from so and so, although he brought with him witnesses who testify, "We wrote and signed the note in question for the borrower, and in our presence he gave it to him," the court must not write another one. However, this is said only concerning promissory notes. But concerning deeds, if such a case happened, they may write him

another one, without mentioning that the seller is responsible in case it should be taken away by creditors. Rabban Simeon b. Gamaliel, however, maintains: This must not be done even concerning deeds. And he used to say also: If one has presented a gift to his neighbor by a deed, if the deed was returned by the beneficiary, the gift is considered returned. The sages, however, say: Nevertheless, the gift remains for the beneficiary. The master said: Without mentioning the responsibility of the seller. Why so? Said R. Safra: Because two deeds must not be written for one and the same field, for the reason it may happen that a creditor of the previous owner will take it away. Then, the buyer who has two deeds may use both deeds to take away the estates which were sold by A to D and E. (*I.e.*, A had sold a field to B, which was encumbered to C, the creditor of A; and C proclaimed his right to it. Then B proclaimed his right, based upon the deed, to the estate encumbered to C, and took away the estate from D, who bought it from A at a later date. After he did so, and the deed was torn by the court, he (B) would make a bargain with C that for a certain amount he should not hasten to take possession of the field to which he was entitled, but should wait a few years and then do it; for the purpose that C's first claim should be forgotten, and later on, when C should take possession of the field which was until now in the hands of B, it should seem to be as a new claim; and then, on the basis of the second deed retained by him (B), he should also take away from E the estates bought by him from A at a later date.

(Says the Gemara:) But as the promissory note of the creditor was torn by the court when he took away from him the first time, how came he to proclaim his right again? And should one say, in case it was not torn? Did not R. Na'hman say: The following is the order of claims before the court? The lender comes to the court to complain that the borrower does not pay his debt; then the court summons him, and if he does not appear it puts him under the ban, and a replevin is given to the lender, that he may levy on the estates of the borrower or of those who bought same from him at a later date than that of the promissory note. And when the creditor finds such estates in some other city, the court of that city tears the replevin and substitutes a document that he may collect such

and such an amount from such and such estate, after the appraisement shall be made for the court. And after this is done, the court furnishes him with a memorandum of the appraisement and tears the previous document. Hence a replevin in which it is not mentioned that the promissory note of the borrower was "torn by us" must not be taken into consideration by any court; and a document which was given for appraisement in which it is not mentioned that the replevin of such and such a court was "torn by us" is also not to be taken into consideration. The same is the case with the memorandum of appraisement with which the court furnishes him, if it is not mentioned that the document giving the right to make an appraisement of the estate for the debt of so and so was "torn by us." Hence the alleged bargain between B and C could not occur? The statement of R. Safras that two deeds must not be written is because it might happen that one should claim the field not for debt, but because he inherited it from his parents, and it was stolen by the possessors of it. In such a case the above-mentioned bargain may be made.*

Said R. Aha of Diphthi to Rabhina: According to the supposed bargain mentioned above, that B asked C that he should not hasten to take possession, to what purpose such a bargain? If he possesses two deeds, he may take away from D and E at one time? And he answered: By such an act he would invite investigation by his opponents, and they would find out the bargain.

One Mishna states: Concerning deeds, they may write another one, without mentioning the responsibility of the seller for the estate, in case it should be taken away. Why? Let the court write a correct deed and deliver it to the buyer, at the same time furnishing the seller with a document that the first deed was lost, and if such should be found, that it was of no value, as another deed was supplied to the buyer. The rabbis said before R. Papa, according to others before R. Ashi: Because this is not stated, we may infer that the court must not furnish the seller with such a receipt. And he answered: In other cases, receipts may be written. In this case, however, it is not because of the bargain mentioned above, but as the receipt

* The commentators give illustrations of how such a bargain might be made, so involved and far-fetched that we spare the reader their infliction.

which makes the first deed valueless is in the possession of A, and not in the hands of the buyers; and it might be that D and E, who had bought from A, would not be aware of such a document, and would not be in a position to protest against the estates being taken away from them by the creditors of A. But, finally, D and E would transfer their claims to A; and then he would show them the document, and the estates would certainly be returned to them? Yea! But meanwhile the creditors would consume the products, and it would be a difficulty for D or E to collect the value from them, as there is a rule: On consumed stolen property it is very hard to collect. It may also happen that D and E bought their estate without any responsibility on A's part; hence one may take it away without any claim from these parties. But if such a case is to be feared, why should they furnish such receipts in cases of loans, as the same may happen with promissory notes—that the goods should be taken away while the receipt is in the hand of the borrower? There it is different. If the claim comes with a promissory note which had nothing to do with this estate, the possessors of the estate would investigate the matter, whether the borrower had paid him the money due, and would not return the estate without consulting the seller, who is the debtor on that promissory note: which is not the case if the document was for real estate, as in such cases usually estates are claimed, and not money.

The master said: "It may be written without mentioning the responsibility," etc. How, then, should it be written? Thus said R. Na'hman: This deed is not for collection, neither from encumbered nor from unencumbered estates, but only to testify that the estate belongs to so and so, who is the buyer of it. Said Raphram: From this, where it must be written that such a document is not in force for collection, it may be inferred that in such a one where nothing is written there is authority to collect with it even from encumbered estates; as it is to be supposed that it is an error of the scribe, who had forgotten to insert the responsibility of the seller. R. Ashi, however, maintains: A document in which nothing is mentioned does not collect from encumbered estates. And the above Boraitha, which states, "not to mention the responsibility," etc., is not as R. Na'hman explained it, but is to be taken liter-

ally—that nothing is to be mentioned—and then he is not responsible.

There was a woman who gave money to one that he might buy estates for her. He bought them for her, without responsibility in case there should be claims. And she came to complain before R. Na'hman, who said: The woman is right, as she sent to you to the end that she should have benefit, but not that she should suffer damage. You, therefore, have to buy from the woman without responsibility, and thereafter to sell to her with your responsibility.

It is said above by R. Simeon b. Gamaliel: If one has presented a gift . . . the gift is considered returned. What is his reason? Said R. Assi: Because it is to be considered as if one were to say: I give you this for a present so long as you keep this document. Rabba opposed: If so, how is it if this document was torn or lost—must one also return the gift? Therefore, said he, the point of the difference between R. Simeon and the rabbis is thus: According to R. Simeon, title is given to documents and to all their contents by transferring; and therefore when the donee returned it to the donor, the latter acquired title to it and to its contents. But according to the rabbis, title is not given by transferring; hence when the donee takes possession of the gift, the returning of the document counts nothing.

The rabbis taught: If one came to claim a field, saying that he possesses a deed, and also that it was in his possession the years of hazakah—according to Rabbi, the main evidence should be the deed (if he cannot show it, his second claim of hazakah must not be considered); and R. Simeon b. Gamaliel maintains: The main evidence is the hazakah. What is the point of their difference? When R. Dimi came from Palestine, he said: They differ whether title is given to documents by transferring. According to R. Simeon b. Gamaliel, the transferring does not give title; and according to Rabbi, it does. Said Abayi to him: If so, you differ with my master, Rabba, who said above: R. Simeon b. Gamaliel holds: That transferring does give title. And he answered: And what if I do differ? Why not? Rejoined Abayi: I mean to say that the above Boraitha could be explained only as done by my master, but not otherwise. And then, if it is as you say, R. Simeon

contradicts himself. Therefore, said Abayi, the point of the difference between Rabbi and R. Simeon b. Gamaliel in the Boraitha just cited is: In case it happened that one witness who signed the deed was found to be a relative, or for some other reason incompetent to be a witness. And it is the same point in which R. Meir and R. Elazar differ. Rabbi holds with R. Elazar, who says that the final act of a divorce, or anything else, is to be considered done by the witnesses who are present at the transfer, and not by the witnesses who sign the document. And R. Simeon b. Gamaliel holds with R. Meir, who said: The final act is considered done by the witnesses who sign the document.

But did not R. Abba say: Even R. Elazar admitted that if there was any forgery in the document, or there were incompetent witnesses, the transferring is not considered, even when it was done by lawful witnesses? Therefore said Rabhina: All agree that if the court said, "We have investigated the testimony of the witnesses, and found it false," or that one of them was incompetent, the document is invalid, as R. Abba declared. And the above Tanaim differ concerning a document without witnesses at all. According to Rabbi, who holds with R. Elazar, if it was transferred in the presence of witnesses, the act is considered final; and according to R. Simeon, who holds with R. Meir, it is not. And if you wish, it may be said that the point of their difference is: Whether a document which the signer admits must or must not be approved by the court. According to Rabbi, it must not; and according to R. Simeon, it must. But have we not heard just the reverse in Middle Gate, p. 11? (The rabbis taught:) Therefore we must say that the point of their difference is: If one is obliged to convince the court of all the evidence one mentioned at the beginning of the trial, or it is sufficient if he convinces it of one part of it (*i.e.*, if he said, first, "My evidence is a deed, and also hazakah," and thereafter he was able to convince the court of the hazakah only). According to Rabbi: It is not sufficient unless he should show the deed. And according to R. Simeon: The latter evidence suffices. But if he should be able to show the deed, then all agree that the evidence of the hazakah would not be necessary at all. And this is similar to the following case: R. Itz'hak b. Joseph claimed to have money with R. Abba,

and came to complain before R. Itz'hak of Naf'ha. And R. Abba claimed: I paid you in the presence of A and B. Said R. Itz'hak (of Naf'ha) to him: Bring, then, A and B—they shall testify. Said he to him: Am I not to be trusted, even if they do not appear? Is it not a Halakha: If one borrowed money in the presence of witnesses, it is not necessary for the borrower that he shall pay him in the presence of witnesses? Rejoined the former: I hold with the Halakha which was said by you, master, in the name of R. Ada b. Ahaba, quoting Rabh: If one says, "I paid you in the presence of A and B," it is necessary for him that A and B shall come and testify. Said R. Abba again: But did not R. Giddle say in the name of Rabh: The Halakha prevails with Rabban Simeon b. Gamaliel? And even Rabh, his opponent, meant with his statement only to make his evidence clear before the court (but not because the law dictates so)? And R. Itz'hak answered: I also mean you shall make your evidence clear before the court, as I hold with Rabha; and if you are not able to do so, you must pay.

MISHNA VI.: If one has paid a part of his debt, according to R. Jehudah, the promissory note must be changed (*i.e.*, the old note must be torn, and a new one made for the balance). According to R. Jose: The lender has to give a receipt for the amount paid. Said R. Jehudah: Then, according to you, the borrower must watch his receipt so that it shall not be consumed by mice. Answered R. Jose: Yea! This is better for the lender, as if it should be a difficulty for the borrower to watch the receipt he will pay the whole debt sooner; and we must not impair the right of the lender.

GEMARA: Said R. Huna in the name of Rabh: The Halakha prevails neither with R. Jehudah nor with R. Jose, but the court must tear the first note and write him another one with the same date as the first. Said R. Na'hman, according to others R. Jeremiah b. Abba, to R. Huna: If Rabh were aware of the following Boraitha: "The witnesses tear the note, and write for him another one with the same date as the first," he would retract from his statement that this must be done by the court. And he answered: He was aware of this Boraitha, and nevertheless he did not retract, for the reason that only the court has the power to collect money, which therefore may tear and write another one with the former date, but not witnesses

who have done the message they were ordered to, as they have no right to do the same again without a new order. Is that so? Did not R. Jehudah say in the name of Rabh: If a deed was lost, witnesses may write another one, even if this occurred ten times, to one field. Said R. Joseph: Rabh meant a deed of gift. And Rabha said: Rabh meant a document without any responsibility of the estate for other claims.

Where is to be found the Boraitha cited above, of which Rabh was aware? It is thus: If one's debt was a thousand zuz on a document, and he paid five hundred, the witnesses may tear the document and write another one for five hundred, of the date of the old one. So is the decree of R. Jehudah. R. Jose, however, says: The document of the thousand remains, and a receipt for five hundred must be given to the borrower. And for two reasons it was said that a receipt should be written and handed to the borrower: first, because he should be compelled to pay as soon as possible; and, secondly, the debt should be counted from the first date. But does not R. Jehudah also say that a new document should be written with the same date as that which was torn? So said R. Jose to R. Jehudah: If you say that the document should be written from the first date, then I differ with you only in one thing—concerning the receipt; and if you think that the document should be written from the date on which a part was paid, then I differ with you in both.

The rabbis taught: If the document was written at the date used by the government, and such a date fell on a Sabbath or on the Day of Atonement, on which it is prohibited for an Israelite to write, this note is to be considered written with a later date, which is valid. So is the decree of R. Jehudah. But according to R. Jose, it is invalid. Said R. Jehudah to him: Did not such a case come before you in Cepphoris, and you made it valid? And he answered: I did so only with a case similar to that about which we are discussing, because, as the date fell on a Sabbath, it is highly probable that the document was of a later date; but in other cases, where such a supposition has no basis, I do not agree with you. But what answer is this? R. Jehudah also claimed that the case happened to be before R. Jose in Cepphoris. Said R. Pdath: All agree that if the date of the document was examined and found

to fall on a Sabbath, or on the Day of Atonement, it must be considered as with a later date, and it is valid. In what they do differ is: A document which is doubtful, if written with an earlier or a later date. According to R. Jehudah, who holds that in case of payment no receipt is given, but the document itself must be returned, it is valid, because it cannot do any harm to any one by being collectible twice. And according to R. Jose, who holds that for a payment in part the document must not be returned, and only a receipt is furnished, it is invalid, because he can collect with it the whole amount, as the receipt is in the hands of the borrower. Said R. Huna b. Jehoshua: Even according to them who say that a receipt may be written, it is only if a part or a half was paid; but for the whole amount no receipt is written, but he must return him the note; and if lost, he loses his money.

(Says the Gemara:) In reality it is not so, as a receipt may be written even on the whole amount; as it happened with R. Itz'hak b. Joseph, who had money with R. Abba, and when he demanded his money, R. Abba demanded his promissory note. And R. Itz'hak answered: The note is lost, and I will give you a receipt. And he answered: There are both Rabh and Samuel who taught that we do not write a receipt. And when this case came before R. Hanina b. Papi, he said: Rabh and Samuel were so beloved by us that if some would bring the earth of their graves we would keep it always before our eyes; but notwithstanding this, there are both R. Johanan and Resh Lakish who decided that a receipt should be given; and the same was said by Rabbin when he came from Palestine in the name of R. Ilah. Common sense also dictates so; as how can it be supposed that if the creditor lost the promissory note the debtor may consume the whole amount and enjoy himself? Abayi opposed: But after your theory that a receipt is to be written, how is it if the receipt is lost—should the lender collect the money again and enjoy himself? Said Rabha to him: Yea! So is the law, as we read in the Scriptures: "The borrower is a servant to the lender" [Prov. xxii. 7]. Said R. Yema, according to others R. Jeremiah of Diphthi, to R. Kahna: What is the basis of our custom that we write documents with later dates, and we also write receipts? And he answered: That which R. Abba said to his scribe: When it shall happen

that you have to write a document with a later date, you must write as follows: This document was postdated by us for a certain reason, and is dated not with the date it was ordered, but of to-day. Said R. Ashi to R. Kahna: However, in our day and in our country we do not act likewise. It is since R. Safras said to his scribe: Should you have to write a receipt for a lost promissory note, then, if you are aware of the date the promissory note was given, you must write: "The money which was due according to the note written on such and such a date was returned to the lender." And if you do not know the exact date, you must write: "The money due on a note of so and so, to so and so, was paid," not mentioning the date at all; and then, if the note should appear again, it will be of no value. Said Rabhina to R. Ashi, and according to others R. Ashi to R. Kahna: But why is it not customary in our time to do so, as we write documents with later dates without mentioning that they are postdated, and receipts with the date of payment, and we do mention the date of the document? And he answered: The rabbis enacted: One shall do so for his own sake; but if one does not care to do so, it will be his own fault if he should suffer damage. Said Rabba b. Ashila to the scribes: If you should have to write a deed of gift, or deeds in which the seller does not take the responsibility of the estate for the future, you shall do as follows: If you remember the date when the donor or the seller told you in the presence of witnesses to do so, you shall write that date; and if you do not recollect the exact date, you may write the current date, and it will not be considered false. Rabh told his scribes, and the same did R. Huna: When you are writing a document in the city of Shili, although you were ordered to do so in the city of Hini, you must write in the document the city in which you are doing it, and not the city where you were ordered.

Rabha said: If one holds a promissory note for a hundred zuz, and requests that it shall be rewritten in two notes, each of fifty zuz, his request is to be refused—for the sake of both the lender and the borrower: for the lender it is better to have one document, as, should it happen that he pay the half, he will give him a receipt, which the borrower will have to watch, and therefore he will hasten to pay his debt; and for the borrower

it is also better, as the law of a document paid in part is, that the lender must take an oath (and in case he is lacking cash the lender will give him time rather than take an oath). And he said again: If one has two notes of fifty each, and he requests that one of a hundred should be made instead of the two, also to this request no attention should be paid—and also for the sake of both. For the lender it is better, if fifty is paid, that the other document should remain in force, so that he will not be obliged to take an oath; and also for the borrower it is better, having paid one note, that he shall not be bound to watch the receipt for the other half. R. Ashi said: If the lender holds a promissory note for a hundred zuz, and orders the scribe to write for him another note for fifty zuz, claiming that the half was paid by the borrower, he must not be listened to; nor if he asks that the note should be written from that date, or from the current date. Why so? It is to be feared that the borrower has paid the whole amount, and to the demand that his note should be returned, he was answered, "It was lost," and furnished him with a receipt instead; and this note for fifty zuz he will collect from him, claiming that this note has nothing to do with the former one.

MISHNA *VII.*: If there were two brothers, one rich and one poor, and they inherited from their father a bath-house or an olive-press house, if for business, they must share equally; but if for private use, the rich one may say to the poor, "You may hire slaves, that they shall heat the bath for your use"; or, "You may buy olives and press them for your private use, but I shall not allow you to do this for a stranger, and you take the benefit." If it happen that in one city two persons bear one and the same name, they cannot give promissory notes to each other nor can any of the inhabitants collect on a promissory note of one of them. If there were found a promissory note of one of the two persons by some one which is marked "paid," the other may also claim: My note is paid. How, then, shall they do, if they wish that their documents shall be of value? Write their names threefold—*e.g.*, Joseph b. Simeon b. Jacob; and if they are alike in this also, they must make a sign to their names (*e.g.*, if one is shorter than the other, he must say, "the Little"; and if they are both of equal size, if one is a priest, he shall write "Cohen").

GEMARA: There was a promissory note which came to the court of R. Huna, in which was written: "I, A, the son of B, have borrowed from *you* a mana." Said R. Huna: "From you" can be any one—even the Exilarch, or even King Sabur. Hence it may be that some one lost it, and you found it. Said R. Hisda to Rabba: You must study the case, as in the evening R. Huna will ask you how to decide it. He had deliberated, and found the following Boraitha: A divorce which was signed by witnesses, but there was no date. Said Aba Saul: If the divorce reads: "I divorced her this day," it is valid. Hence we see that "this day" means that on which it was given out. The same is the case with this document; "from you" means from this man who holds it. Said Abayi to him: But perhaps Aba Saul holds with R. Elazar, who holds that the final act of the witnesses of transfer is considered (therefore he makes valid such a divorce as must be delivered in the presence of lawful witnesses). But in our case, why should it not be feared that the plaintiff found a lost note? And he answered: That such a supposition is not to be taken into consideration may be inferred from our Mishna, which states: If there are two persons who bear one and the same name, they cannot give promissory notes to each other, nor to any of the inhabitants, etc. But if one of them has a promissory note from one of the inhabitants, it is valid, and he may collect. Now, why is it not to be feared that it was lost by the other person who bears the same name, and this plaintiff found it? Hence we see that this is not taken into consideration. Abayi, however, may say that this is not taken into consideration because there is only one person who could lose it, and if so, he would certainly announce his loss; but in other cases, where it might be lost by any one, it should be feared. But is there not a Boraitha which states: As the two persons who bear the same name cannot collect promissory notes from each other, so also cannot one of them collect from any other one? Hence this Boraitha differs with our Mishna. And what is the point of their difference? Whether in such a case the plaintiff has to bring evidence. The Tana of the Mishna holds that he has not; and the Tana of the Boraitha maintains that he has. As it was taught: To promissory notes title is given by transferring. However, according to Abayi the holder

of them must bring evidence that they were transferred to him. And Rabha said: He must not.

Said Rabha: I infer my statement from the following Boraitha: If one of the brothers holds a promissory note from some one, claiming that his father or his brother had transferred it to him, it is for him to bring evidence. Hence we see that this law holds good only concerning brothers, who usually hinder one another, and claim that their brother took it without their or their father's consent; but in all other cases no evidence is needed. Abayi, however, maintains: On the contrary, this Boraitha comes to teach: Lest one say that concerning brothers, who hinder one another and are very careful with the inheritance, no evidence is needed for the one who holds the document, although in all other cases it is, the Boraitha came to state that it is not so. But there is another Boraitha: As the persons who bear the same name are allowed to take promissory notes from others, so they may take from each other. And what is the point of their difference? Whether a promissory note may be written for the borrower in the absence of the lender. The Tana of our Mishna holds that this may be done. Hence one of the two persons may go to the scribe, telling him that he wants to borrow from his fellow-citizen, who bears the same name, some money. And after he receives such a promissory note, he may claim that this was given by the other to him; therefore our Mishna says that they cannot collect from each other. And the Tana of the Boraitha holds: The promissory note must not be furnished to the borrower in the absence of the lender. Hence there is no fear.

"If a promissory note was paid," etc. We see, because a receipt was found. But how would it be if not? The promissory note would hold good. But our Mishna states: Nor can any of the inhabitants collect. Said R. Jeremiah: It speaks of when in the note his name was written threefold; but if so, let them see the receipt, to whom it was made out. Said R. Hoseah: It speaks of when it was written threefold in the note, but not in the receipt. Abayi, however, said: The Mishna is to be explained thus: If there was found among the borrower's documents a writing, "The promissory note which I gave to Joseph b. Simeon is paid," if he possess such from the other, both are considered paid.

"To write their names threefold," etc. There is a Boraitha: If both were priests, they must write their names fourfold—e.g., Joseph b. Jacob b. Itz'hak b. Abraham; and that all the four names should be alike is very rare.

MISHNA VIII.: If one (while struggling with death) says to his son: "A promissory note among the notes I possess is paid, but I do not remember which," all of them are to be considered paid. If, however, one person has given two promissory notes, the larger amount is considered paid, and the smaller amount not.

GEMARA: Rabha said: If one says: "A promissory note from you, which I possess, is paid," and there were two from him, the larger amount is considered paid, and the smaller amount not; if, however, "The debt you owe me is paid," all the promissory notes from him which are in his hands are considered paid. Said Rabhina to him: According to your theory, if one says: "My field is sold to you," does it mean that the largest he has is sold? And if he said, "The field I possess is sold to you," does it mean all the fields? There it is different, as it is for the plaintiff to bring evidence; and if the buyer so claims, he has to bring evidence to what he claims. But here the creditor is the plaintiff; and if he says, "Your debt is paid," it is the best evidence that all the notes are paid.

MISHNA IX.: If one made a loan to his neighbor through a surety, he must not collect first from the surety, unless the borrower does not possess any estate; however, if the stipulation was made that he may collect from whom he pleases, then he may start with the surety.

R. Simeon b. Gamaliel (however) is of the opinion that even in such a case the lender may not start with the surety, unless the borrower does not possess anything. And he used to say thus: If one made himself a surety to a woman for her marriage contract, and thereafter the husband was about to divorce her, the court should compel him to vow that from the time divorced he should not derive any benefit from his former wife, which means not to remarry her, for fear that the husband and his wife may have made a bargain to collect the money for the marriage contract from the surety, and thereafter he will remarry her.

GEMARA: And why should not the creditor collect from the surety? Both Rabba and R. Joseph said: The surety may

claim: I have given bail for the money in case the borrower should die or run away, but not if I deliver him to you. R. Na'hman opposed, saying: Such is the Persian law. But this is not so, as the Persians collect from the surety only, even when the borrower possesses estates? R. Na'hman meant to say: Such a law is similar to a Persian law, for which they give no reason, and therefore he says the Mishna meant: He shall not summon the surety unless he has already summoned the borrower. So also we have learned in the following Boraitha: If one made a loan to his neighbor through a surety, he must not summon the surety first, unless the stipulation was that he might collect from whom he pleased. R. Huna said: Whence do we deduce that a surety is obliged to pay? From [Gen. xliii. 9]: "I will be a surety for him." R. Hisda opposed, saying: He was not a surety only, but also a receiver, as it reads farther on, "from my hand shalt thou require him," and also [ibid. xlii. 37], "deliver him into my hand," etc. Therefore said R. Itz'hak: From [Prov. xx. 16]: "Take away his garment, because he hath become surety for a stranger." (Here is repeated from Middle Gate, p. 305. See there.)

Amimar said: Whether a surety has to pay or not, R. Jehudah and R. Jose differ. According to the latter, who holds that an *asmachtha* gives title, he is responsible; and according to the former, who holds that an *asmachtha* does not give title, the surety is not obliged to pay. Said R. Ashi to him: But is it not a fact that a surety is responsible, although it is now taken as a rule that an *asmachtha* does not give title? Therefore said R. Ashi: Because of the pleasure that the lender trusted him on his word, the surety made up his mind that the lender should be paid under all circumstances; and such a case it is not considered as an *asmachtha*, but as a debt which lies upon himself.

"*That he may collect from whom he pleases,*" etc. Rabba b. b. Hana in the name of R. Johanan said: Even then, if the borrower possess estates, he must not collect from the surety. But does not the latter part of the Mishna state that Simeon b. Gamaliel said so; from which it is to be inferred that the first Tana holds that he may collect from the surety in any event? The Mishna is not complete, and should read thus: If one made a loan to his neighbor through a surety, he must not collect

through the surety unless he had made the stipulation that he might collect from whom he pleased. But even then he collects from the surety in case the borrower does not possess any estate; but if he does, he must collect from the borrower first, and if it should not be sufficient, then from the surety. If, however, the surety was also the receiver of the loan for the borrower, then he may collect from the surety, although the borrower possesses estate. R. Simeon b. Gamaliel, however, maintains that even then he collects from the borrower if he possesses any estate. (In the name of R. Johanan was said (First Gate, p. 156): In that case the Halakha does not prevail with R. Simeon b. Gamaliel.)

R. Huna said: If the surety said: "Lend to this man, and I am the surety"; or, "I will pay"; or, "Count the debt to me"; or, "Lend him, and I will give to you"—all these versions are considered surety. If, however, he said to him: "Give to him, and consider me as receiving the money"; or, "Give to him, and I will pay"; or, "Count the debt to me"; or, "Give to him, and I will return to you"—all these versions are considered receipt. (*I.e.*, if he said: "Borrow from him," it means that he should be the debtor: "In case he shall not pay, I will." But if he says, "Give to him," then the borrower is not considered here at all, as the lender gave by his order.)

The schoolmen propounded a question: How is it if he said, "Lend him, and count me as the receiver"; or, "Give to him, and I will be surety"? According to R. Itz'hak: In the first case, in which he remarked, "I will be the receiver," he must be so considered, although he said, "Lend *him*"; and in the second case, in which he said, "I will be surety," he is to be so considered, although he said, "*Give* to him." R. Hisda, however, maintains: In either case he is considered a receiver, unless he said, "Lend him, and I will be the surety." And according to Rabha: All the versions mentioned above are considered surety, unless he said, "Give to him, and I will return to you."

Said Mar b. Amimar to R. Ashi: So said my father: If the expression was, "give to him, and I will return you," then has the lender nothing to do with the borrower. (Says the Gemara:) In reality it is not so. The lender may collect the

money from the borrower, unless the surety took the money from the hand of the lender and delivered it to the borrower.

There was a judge who transferred the estate of the borrower to the lender, before the lender had demanded his money from the borrower, and R. Hanin b. R. Yeba removed the judge. Said Rabha: Who so wise to do such a thing, if not R. Hanin b. R. Yeba, as he holds that the estates of the debtor are his surety; and our Mishna states: He must not collect from the surety, nor must he demand his debt first from the surety?

There was a surety for orphans who had paid the lender before he notified the orphans (*i.e.*, he was surety for the father of the orphans, who borrowed some money, and after his death he paid the lender from his own pocket, and then summoned the orphans to pay him from their estates). And R. Papa decided: To pay a debt for which there is no document is a meritorious act, to which orphans who are not of age cannot be compelled; and therefore the surety must wait with his claim until they shall become of age. R. Huna b. Jehoshua, however, maintains: The reason why the orphans have not to pay until they shall become of age is, because they are not aware that the deceased had not paid such a debt. And the difference of the two statements is, in case the deceased had confessed before his death that he had not yet repaid the debt. Then, according to R. Huna, the orphans may be compelled to pay; but not, according to R. Papa.

A message was sent from Palestine: If one was put under the ban because he declined to pay his debt, and he died while still under the ban, he is to be considered as if he had confessed before his death that he had not yet paid, and the orphans have to pay, as the Halakha prevails in accordance with R. Huna b. Jehoshua.

An objection was raised from the following: If the promissory note of the deceased was in the hands of the surety, who claims to have paid the lender, and he demands the debt from the orphans' estates, he cannot collect (for perhaps the lender lost it, and he found it). If, however, there was marked in the note by the lender that he has received the debt from the surety, he may. Hence this is correct only with R. Huna's statement; but it contradicts R. Papa, who said: The orphans must not

be compelled to pay in such a case. R. Papa may say: When the lender wrote that he received the money from the surety and transferred the promissory note to him, it is no longer considered a debt without a document, the payment of which is only a meritorious act, to which the orphans cannot be compelled; as for that purpose the lender marked, "I have received from you that from this date the promissory note should be considered as if given by the deceased to the surety."

There was a surety for a deceased debtor to a heathen, who paid the heathen before he had demanded his debt from the orphans. Said R. Mordecai to R. Ashi: So said Abimi of Hagrunita in the name of Rabha: Even according to him who holds that it may be doubted whether the deceased had paid his debt before dying, it is only when the creditor was a Jew, but not when he was a heathen, who usually demands the debt from the surety and not from the debtor. Answered R. Ashi: It is just the contrary. Even according to him who said that it must not be doubted whether the debt was paid, it is only concerning a Jew; but concerning a heathen, whose law dictates that they have to collect the debt from the surety, it is to be feared that if the surety should not have in his hand an amount which would cover the debt in case it should not be paid, he would not consent to be a surety; and therefore he cannot collect from the orphans except by suing them when they shall be of age.

"If one made himself surety to a woman for a marriage contract," etc. Moses b. Azoi was a surety for the marriage contract of his daughter-in-law, whose husband was R. Huna, who was a scholar, and became thereafter very poor and was unable to support his family. Said Abayi: Is there not one who shall advise R. Huna to divorce his wife, and she shall go to his father, who is rich, and collect the marriage contract, and thereafter R. Huna shall remarry her? Said Rabha to him: But does not our Mishna state: "He shall vow not to derive any benefit," etc.? Rejoined Abayi: Must, then, every one who wishes to divorce his wife go to the court? Finally it was developed that R. Huna was a priest, who could not remarry his wife in case of being divorced. Said Abayi: This is what people say: Poverty follows in the path of the poor. But did he not say above (p. 304), that he who gives such advice

is called a shrewd knave? In this case, where the surety was his father and the son was a scholar, it is different. But was not the father a surety only, who has not to pay (as will be explained farther on)? He was also a receiver. But even then, it is correct according to him who holds that a receiver must pay, even in case the groom possessed nothing at the time of marriage. But what can be said to him who said that in such a case even a receiver is not to be compelled to pay? It may be said that when his father became surety the son was still in the possession of some estates; and if you wish, it may be said that with a father it is different. As it was taught: A surety in a marriage contract, all agree that he has not to pay. A receiver from a creditor, all agree he must pay; but concerning a receiver in a marriage contract and a surety from a creditor the rabbis differ. According to one: If the borrower possessed estates at the time the loan was made, the receiver must pay, as it may be supposed that he obliged himself with all his mind, as he had nothing to fear; and the other holds: He must pay in any event. The Halakha, however, prevails: A surety must pay in any event, unless he was a surety to a marriage contract, even in case the husband was in possession of estates at the time he became surety. And the reason is, because it may be supposed that he did so as a meritorious act, in order that the couple should not be parted; and he did no harm to the bride, as, if the husband had money, he would pay.

R. Huna said: A sick person who has consecrated all his estates, and at the same time said, "So and so has a mana with me," he may be trusted, as it is to be assumed that one would not use deceit against the sanctuary. R. Na'hman opposed: Is it, then, usual that one should use deceit against his children? And, nevertheless, both Rabh and Samuel say: If a sick person said, "So and so has a mana with me," if he added, "Give to him," he is to be listened to; but if he did not, he is not to be listened to. Hence we see that, if he did not say "Give," his statement that so and so has a mana with him is considered as if he did so for the purpose that, should he be cured, his children should not think him very rich. Why should not the same be applied in the case of the sanctuary? R. Huna speaks in case there was a promissory note, and only the sick person admitted that the note was a right one. If so, then we must

say that the statements of Rabh and Samuel applied even when there was no promissory note. But if so, it was a loan without a document, and both Rabh and Samuel said: On such a loan one cannot collect, neither from the heirs nor from the buyers? Therefore said R. Na'hman: In both cases it speaks of when there was a document: one case treats of when the note was approved, and the other when it was not. And then if he said "Give," he approves the note, and is to be listened to; and if he does not say "Give," the note remains unapproved.

Rabba said: A sick person who said, "A has a mana with me," and thereafter the orphans claimed that they have paid, they are to be trusted. If, however, he said, "Give a mana to A," and the orphans say they have paid, they are not to be trusted. But is not common sense against such a theory? It seems just the contrary. If the father said, "Give," and the orphans said "We did so," they may be trusted; but if the father said, "A had a mana with me," it may be supposed they did not hasten to pay him, and why should they be trusted? Therefore if such a statement was made by Rabba, it must be thus: If a sick person said, "A has a mana with me," and the orphans thereafter said that after deliberating the deceased said, "I have paid it already," they may be trusted, as it is probable the deceased remembered that he had returned it. But if the sick person says, "Give a mana," and thereafter the orphans claim the same as is said above, they are not to be trusted; as if it were for deliberation, he would not say "give."

Rabha questioned: If a sick person had confessed (*i.e.*, his creditor came to him, saying, "You owe me a mana," and he said, "yea"), must the sick person also add "yea," that those who are present shall be witnesses, as is required in such a case of one in good health, or not? And it is also a question whether he must say to the witnesses: "Mark this in writing"; and also whether a sick person has the right to say, "It was only a joke," or, "This is out of the question." Concerning one who is dying, after deliberating, he came to the conclusion that all these are not necessary, as there is a rule: The words of a dying person are to be considered as written and delivered to whom it concerns.

MISHNA X.: If one borrows money on a promissory note, the lender has a right to collect from encumbered estates; and

if without a note, but in presence of witnesses, the lender may collect from unencumbered only. If A holds a writing that B owes him money (not a promissory note, which usually must be drawn by witnesses), he collects from unencumbered estates only. A surety who has signed his name after the signatures of the document ("I, so and so, am a surety"), the lender may collect from the surety from unencumbered estates only (as it is considered a verbal surety, as there were no witnesses who testified to this).

Such a case happened to come before R. Ishmael, and he decided that he should collect from free estate. Ben Nanass, however, maintains: He must not collect from any estate. And to the question of R. Ishmael: Why so? he answered: If it happen that a creditor sees his debtor in the market, grapples him by the throat, and one passes by and says, "Leave him alone, I will pay," he is nevertheless free, because the loan was made not upon his surety. The same is the case here. If, after the document was made and the witnesses signed it, he adds, "I am a surety," he is not considered such, as he was a surety when the loan was already made. Said R. Ishmael: If one wishes to become wise, he shall occupy himself with the civil law; for there is no store (of wisdom) in the entire Law richer than it (the civil law). And those who wish to study civil law may take lessons of Ben Nanass.

GEMARA: Ula said: Biblically there is no difference between a loan on a document and by word of mouth; and it should be collected from encumbered estates. Why is it said that on a verbal one, one collects from free estate only? Because the buyers of the borrower should not suffer damage (*i.e.*, as they could not be aware of a thing done verbally). But when there is a document, it is their own fault if they do not investigate before they buy. Rabba, however, maintains the contrary: Both loans ought to be collected from free estates only; as, according to the biblical law, the estates are not mortgaged even if there is a document (unless it is so written). But why did the rabbis enact that a document collects from encumbered estate? In order not to close the door for borrowers. For a verbal loan, however, they did not enact, as it is not known to the people; and the buyers from the borrower could not know there was a loan.

Did, indeed, Rabba say so? Was not his decision [in Chapter VIII., p. 274] "that a first-born takes a double share in the estate collected after the death of the father"? Now if not mortgaged biblically, in a document why should he take a double share—to which he is not entitled in movable property or money collected after death? And lest one say that the names of Ula and Rabba should be reversed in the above statements, this would not hold good, as we have heard Ula saying elsewhere that a creditor collects biblically from the worse estate of the debtor. Hence we see that Ula holds that estates are mortgaged biblically. (This presents no difficulty, as the cited statement of Rabba [in Chapter VIII.] was only to give the reason of the Palestinians; but he himself does not hold with them.)

Both Rabh and Samuel hold: A verbal loan is not collectible—neither from heirs nor from buyers; as, biblically, estates are not mortgaged on any loan. But R. Johanan and Resh Lakish both hold: They are mortgaged, and therefore a loan is collectible—whether from heirs or from buyers. Said R. Papa: The Halakha prevails that a verbal loan is collectible from heirs, for the purpose of not closing the door to borrowers; but is not collectible from buyers, who could not know of the existence of such a debt.

"If *A* holds a writing . . . from unencumbered estates," etc. Rabba b. Nathan questioned R. Johanan: How is it if this writing was approved by the court? And he answered: Even then, the same is the case. Rami b. Hama objected from a Mishna in Tract Gittin, in which it is stated that, according to R. Elazar, if such a document, without witnesses, was given to the lender in the presence of witnesses, he may collect from encumbered estates? The case is different, as the writing was with the intention of transferring it in the presence of witnesses; it is the same as if the witnesses had signed the document.

"*A* surety . . . after the signatures," etc. Said Rabh: If the surety signed before the signatures, it may be collected from encumbered estates; and if after, from unencumbered estates only. But at some other time the same Rabh said: Even if he had signed his name before the signatures, it is to be collected from free estates only. Hence Rabh contradicts him-

self. This presents no difficulty, as his statement, from free estates only, speaks of when the surety wrote, *e.g.*, "B is a surety," which does not make it clear for whom he is a surety; and the witnesses who signed their names after him, perhaps they have nothing to do with the surety. And his statement that it is collectible from encumbered estates speaks of when there was written after the text, explaining the loan, "*And so and so is the surety,*" to which the approval was by the witnesses signed after him. And the same was said by R. Johanan.

"*Such a case came before R. Ishmael,*" etc. Said Rabba b. b. Hana in the name of R. Johanan: Although R. Ishmael praised Ben Nanas, the Halakha prevails with R. Ishmael.

The schoolmen propounded a question: How is it if such a case as illustrated by Ben Nanas occurs? Come and hear what R. Jacob said in the name of R. Johanan: Even then, R. Ishmael differs with him. But with whom, then, does the Halakha prevail? Come and hear what Rabbin, when he came from Palestine, said in the name of Johanan: R. Ishmael differs with Ben Nanas even in the case illustrated by him, and the Halakha prevails also in this case with R. Ishmael. Said R. Jehudah in the name of Samuel: However, if the man who said, "Leave him alone, I will pay," fulfils his promise with the ceremony of a sudarium, he is mortgaged. Infer from this that in case of all other sureties no sudarium is necessary; and this differs with R. Na'hman, who said: Only a surety, in the presence of the court, is free from a sudarium; but all others are not. The Halakha, however, prevails that with a surety who was present when the money was delivered, a sudarium is not needed, but after the delivery it is needed. With a surety appointed by the court it is not needed, as, because of his pleasure at the court choosing him to be the surety, he makes up his mind to pay, and is mortgaged.

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